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The India Council Acts 1882

Sub.- Law And Legislation/ India/ The India Council Acts 1882

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THE INLAND EMIGRATION ACT, 1882.

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ACT No. I OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 6th January, 1882.)

An Act to amend the law relating to Emigration to the Labour-districts of Bengal and Assam.

WHEREAS it is expedient to amend the law relating to the emigration of natives of India to the districts of Chittagong, the Chittagong Hill Tracts, Lakhimpúr, Sibságar, Naugong, Darrang, Kamrup, Goálpára, Khásí Hills, Káchár and Silhat; It is hereby enacted as follows :— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Inland Emigration Act, 1882." Short title.

It extends to the territories respectively administered by the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioners of Oudh and Assam: Local extent.

And it shall come into force at once. Commencement.

2. Bengal Act No. VII of 1873 *(to amend the law relating to the emigration of labourers to the districts of Assam, Cachar and Silhat and to regulate contract-labour and service)*, Bengal Act No. II of 1878 *(to extend the provisions of Bengal Act VII of 1873 to the district of Chittagong and to the Chittagong Hill Tracts)* and Regulation No. IV of 1877 *(a Regulation for extending to the Chief Commissionership of Assam, Chapter 13 of Bengal Act VII of 1873)* are hereby repealed. Repeal of enactments.

All contracts entered into, rules and appointments made, orders and notifications published and licenses granted under ~~the said~~ Bengal Act No. VII of 1873, or any of the Acts thereby repealed, and now in force, shall be deemed to have been respectively entered into, made, published and granted under this Act.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"Labour-districts":

The expression "the labour-districts" means the districts of Chittagong, the Chittagong Hill Tracts, Lakhimpúr, Sibságar, Naugong, Darrang, Kamrup, Goálpára, Khási Hills, Káchár and Silhat; and the expression "a labour-district" means any one of such districts:

"Magistrate":

"Magistrate" means a Magistrate of a district, Sub-divisional Magistrate, and any other person appointed, by name or by virtue of his office, by the Local Government to perform the functions of a Magistrate under this Act:

"Superintendent," "Registering officer," "Inspector" and "Assistant Inspector":

"Superintendent," "Registering officer," "Inspector" and "Assistant Inspector" mean respectively a Superintendent of Emigration, a Registering officer, an Inspector of Labourers and an Assistant Inspector of Labourers appointed under this Act:

"Contractor," "sub-contractor," "recruiter" and "local agent":

"Contractor," "sub-contractor," "recruiter" and "local agent" mean respectively a contractor, a sub-contractor, a recruiter and a local agent licensed under this Act:

"Labour-contract":

"Labour-contract" means a contract entered into in accordance with the provisions of this Act to labour for hire in a labour-district, otherwise than as a domestic servant:

"Labourer":

"Labourer" means any person bound by a contract under the provisions of the said Bengal Act No. VII of 1873 or by a labour-contract under the provisions of this Act. And it also includes any person registered under section thirty-two or section sixty-six as a labourer:

"Estate":

"Estate" means the land upon which any labourers

or

or more than fifty other persons have been engaged to labour:

"Employer" means the chief person for the time being in charge of any estate upon which labourers or more than fifty other persons are employed: "Employer"

"Emigrate" denotes the departure of any native of India of the age of sixteen years or upwards (other than a native of a labour-district) from any part of the territories administered by the Lieutenant-Governor of Bengal, not being a labour-district, or from the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh, for the purpose of labouring for hire in a labour-district otherwise than as a domestic servant: "Emigrate"

"Dependent" means any woman (not being a labourer), any child and any aged or incapacitated relative or friend accompanying any labourer with the consent of a contractor, sub-contractor, recruiter, local agent or garden-sardár: "Dependent"

"Vessel" includes anything made for the conveyance by water of human beings or property: "Vessel":

"Master" means the person for the time being in charge of a vessel: "Master":

"Writing" and "written" include "printing" and "lithography." "Writing" and "written."

And all words defined in the Indian Contract Act, 1872, and used in this Act, shall have the meanings respectively assigned to them by that Act. Words to be understood as defined in Contract Act.

4. The Local Government may, with the previous sanction of the Governor General in Council, by notification in the local official Gazette, declare that any labour-district within the territories administered by such Government shall, from a day specified in such notification, cease to be subject to all the provisions or any specified provision of this Act; and from such day such labour-district shall cease to be subject to the provisions of this Act or to the provision so specified, as the case may be. Power to exempt labour-district.

5. The Local Government may, with the previous sanction Local Government may prohibit emi-

gration to any labour-district or part thereof.

sanction of the Governor General in Council, by notification in the local official Gazette, prohibit, from a day specified in such notification, all natives of India, or any specified class of such natives, from emigrating from the whole or any specified part of the territories under its administration, to any labour-district or to any specified portion of any such district.

The Local Government may with the like sanction inlike manner vary or cancel any such notification.

Notification under sections 4 and 5 not to affect prior acts, &c.

6. The publication of a notification under section four or section five shall not affect any act done, offence committed or proceedings commenced before such publication.

Saving of free emigration and of ordinary contract law.

7. Save as provided by section five, nothing in this Act shall be deemed to prohibit any native of India from emigrating to, or entering into a contract to labour in, a labour-district otherwise than under the provisions of this Act.

Appointment of officers.

8. The Local Government may appoint, either by name or by virtue of their office, so many persons as it thinks necessary to be Superintendents of Emigration, Registering officers, Embarkation Agents, Debarkation Agents, Inspectors of Labourers, Assistant Inspectors of Labourers and Medical Inspectors under this Act respectively, and, with respect to any such officer, may, subject to the control of the Governor General in Council, declare the local area situate in the territories subject to its administration within which he shall exercise the powers and perform the duties conferred and imposed upon him by this Act or any rule made hereunder.

The Local Government may suspend or remove any persons whom it so appoints.

Every person so appointed shall be deemed a public servant within the meaning of the Indian Penal Code.

CHAPTER II.

LABOUR-CONTRACTS GENERALLY.

Essentials of labour-contract.

9. Every labour-contract shall be in writing, and shall

shall be executed in duplicate on substantial paper. Every such contract shall specify—

(*a*) the names of the labourer and his employer;

(*b*) the term for which the labourer is to labour;

(*c*) his monthly wages in money and the price at which rice is to be supplied to him;

(*d*) the labour-district in which, and, if the labourer so request, the estate on which, he is to labour.

Every such contract shall be in the form prescribed in the schedule hereto annexed.

No such contract shall be made for a term exceeding five years, commencing from the date of its execution; or shall stipulate for a less rate of monthly wages for a completed daily task regulated in accordance with the provisions of this Act than five rupees in the case of a man and four rupees in the case of a woman for the first three years of the term of the contract, or six rupees in the case of a man and five rupees in the case of a woman for the fourth and fifth years of such term.

No contract made in contravention of, or not in accordance with, the provisions of this section shall be enforceable under this Act as a labour-contract against the labourer entering into it.

If contract does not specify estate, labourer to be deemed to have contracted to labour on any estate in charge of employer and situate in labour-district.

10. Unless the labour-contract specifies the particular estate on which the labourer is to labour, the labourer shall be deemed to have contracted to labour on any estate in charge of the employer for whom he has contracted to labour, and situate in the labour-district specified in the contract:

Provided that no labourer shall, without his own consent, be separated from his dependents (if any) or from any other labourer who is the wife, husband, son or daughter of such labourer.

Persons of sixteen years of age may contract to emigrate.

11. Notwithstanding anything to the contrary in the Indian Contract Act, 1872, it shall be lawful for any person of the age of sixteen years or upwards to enter into a labour-contract.

Section 11.—A[illegible] sert the following section [illegible]

CHAPTER III.

RECRUITING BY CONTRACTORS, SUB-CONTRACTORS AND RECRUITERS.

A.—Contractors and Sub-contractors.

Superintendent may license contractors.

Superintendent may license sub-contractors.

12. Any Superintendent specially empowered in this behalf by the Local Government may grant to such persons as he thinks fit licenses to be contractors within the whole or any part of the local area for which such Superintendent has been appointed. He may also, on the application of any contractor, grant to such persons as he thinks fit licenses to be sub-contractors on behalf of such contractor, within the whole or any part of the local area for which such contractor is licensed.

Form of, and fee for, contractor's and sub-contractor's licenses.

13. Every license to a contractor or sub-contractor shall be in such form, and subject to the payment of such fee, not exceeding, in the case of a contractor, one hundred rupees, and in the case of a sub-contractor, fifty rupees, as the Local Government may by rule prescribe.

Period for which contractor's and sub-contractor's license to remain in force.

14. No such license shall be granted for a longer period than one year from the date thereof, and, if the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may at any time be cancelled by the Superintendent who granted the same.

Appeal against order cancelling license.

A contractor or sub-contractor may, within one month from the date of any order of a Superintendent cancelling his license, appeal against such order to the Local Government.

The order of the Local Government on such appeal shall be final.

Duties of contractors.

15. Every contractor, in addition to the special duties herein assigned to him, shall afford such information to the Superintendent and furnish him with such returns and reports as he may, subject to any rules which may be framed by the Local Government in this behalf, require.

16. A

16. A sub-contractor may be licensed to act on behalf of more than one contractor:

Provided that he obtains a separate license in the case of each contractor for whom he desires to act.

Sub-contractor may be licensed to represent more than one contractor.

17. A contractor or sub-contractor may act as a recruiter, and shall, when so acting, be subject to all the provisions hereinafter contained relating to recruiters.

Contractor or sub-contractor may act as recruiter.

18. Every contractor shall be liable for the acts and defaults as a sub-contractor or recruiter of any person licensed to be a sub-contractor or recruiter on his behalf, and shall be bound to make good all payments which, under this Act or any rule made hereunder, any such person is ordered to make.

Liability of contractors for sub-contractors' and recruiters' acts and defaults.

The Superintendent may cancel the license of any contractor whenever the license of any person so licensed on his behalf is liable to be cancelled under this Act.

Nothing in this section shall be deemed to render a contractor criminally liable for any act or default on the part of any person licensed to be a sub-contractor or recruiter on his behalf.

19. Every contractor shall establish and maintain, at such places as the Local Government may direct, suitable depôts for the reception and lodging, previous to their despatch to the labour-districts, of labourers engaged by him or by sub-contractors or recruiters licensed to act on his behalf, and shall provide at his own expense all necessary food, clothing and medical treatment for such labourers during their stay at such depôts.

Contractor to establish depôts.

20. No such depôt shall be used for the reception and lodging of labourers until it has been inspected and approved of by the Superintendent and the Medical Inspector. Every such depôt shall be under the supervision of the Superintendent, the Magistrate of the district or such other officer as the Local Government may appoint in this behalf, and shall be open at all times to inspection by the Superintendent, the

Inspection and supervision of depôts.

Magistrate

Magistrate of the district or such officer, and by the Medical Inspector.

Whenever the Superintendent considers that any such depôt is unhealthy, or has become unsuitable for the purpose for which it was established, he may by order in writing prohibit the using of such depot for the reception and lodging of labourers.

Establishment of hospital-depôts

21. In addition to the depôts hereinbefore provided for, the Local Government may establish a separate hospital-depôt for the reception of labourers suffering from any dangerously infectious or contagious disease.

Contractor to contribute towards establishment and maintenance of hospital-depôt

22. Whenever any such hospital-depôt is established by any Local Government, such Government may require any contractor having a depôt in the neighbourhood of such hospital-depôt to contribute to the expense of the establishment and maintenance of such hospital-depôt such reasonable sum as it may direct. Such sum may be recovered as an arrear of land-revenue due from any contractor so required.

Every hospital-depôt so established shall be under the charge of a medical officer appointed by the Local Government. Any Medical Inspector may direct the transfer of any labourer from a depôt established within the local limits of his jurisdiction to a hospital-depôt established within such local limits.

B.—Recruiters.

Superintendent may license recruiters

23. Any Superintendent empowered in this behalf by the Local Government may, on the application of any contractor or of any sub-contractor acting on behalf of a contractor, grant to such persons as he thinks fit licenses to be recruiters on behalf of such contractor within the whole or any specified part of the local area for which such contractor has been licensed.

Form of, and fee for, recruiter's license.

24. Every license to a recruiter shall be in such form and subject to the payment of such fee, not exceeding sixteen rupees, as the Local Government may by rule prescribe.

Period for which license is granted.

25. No such license shall be granted for a longer period than one year from the date thereof; and if the

the licensee fails to comply with any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any such license may be cancelled by the Superintendent who granted the same.

26. Every recruiter shall hold a certificate in writing authorizing him to act as such and signed by the contractor or sub-contractor on whose application he was licensed.

Recruiter must hold a certificate.

27. No recruiter shall in any local area engage or attempt to engage any person as a labourer unless such recruiter's license bears the countersignature of a Magistrate having jurisdiction throughout such local area.

Countersignature of recruiter's license.

No such Magistrate shall countersign a recruiter's license unless and until he has satisfied himself by such enquiry as he thinks fit that the licensee is not by character or from any other cause unfitted to be a recruiter under this Act, that he holds the certificate mentioned in section twenty-six, and that sufficient and proper accommodation has been provided in a suitable place and is available for such labourers, or persons intending to become labourers, as may be collected by such recruiter pending their removal to a depôt.

28. Every Magistrate shall have, for the supervision, inspection and regulation of the place situate within the local limits of his jurisdiction where such accommodation is provided, the same powers as are by this Act conferred on the Superintendent in respect of depôts.

Magistrate to supervise accommodation.

Any Magistrate of a district or division of a district may authorize any Magistrate subordinate to him, or any officer of police above the rank of sub-inspector, to visit and inspect such place at any time; and all recruiters or other persons in charge of such place shall afford to subordinate Magistrates and officers of police so authorized every facility for making such visits and inspections.

29. If any Magistrate who has countersigned a recruiter's

Magistrate may cancel countersig-

nature in certain cases.

recuiter's license afterwards finds reason to think that the licensee is by character or from any other cause unfitted to be a recruiter under this Act, or that the accommodation provided under section twenty-seven has become insufficient or improper or has ceased to be available, or that the place in which it is provided has become unsuitable, he may require the licensee to produce his license and may cancel his countersignature thereon, or he may impound the license and send it for cancellation to the Superintendent who granted the same.

Notice to Superintendent of refusal to countersign or cancellation.

Every Magistrate refusing to countersign a recruiter's license or cancelling his countersignature thereon shall at once report such refusal or cancellation and the grounds thereof to the Superintendent who granted such license.

C.—Procedure before Arrival at Depôt.

Intending labourer to be taken for examination to medical officer.

30. Every recruiter who desires to engage any person as a labourer shall appear with such person before such medical officer as the Local Government may appoint to examine such persons within the local limits of the jurisdiction of the Magistrate by whom such recruiter's license was countersigned, or, if no such officer has been appointed, before such medical officer as the Registering officer, before whom such person is taken for registration as hereinafter provided, may direct.

The medical officer shall thereupon examine such person, and shall, if satisfied that he is in a fit state of health and able in point of physical condition to proceed to the labour-district in which he intends to labour, give him a certificate to that effect.

If certified to be fit, intending labourer to be brought before Registering officer.

31. Every person who obtains a certificate under section thirty, together with any persons about to proceed to a labour-district as his dependents, shall thereupon be brought by the recruiter before the Registering officer having jurisdiction within the local area for which such recruiter is licensed. The recruiter shall at the same time produce and show his license to such Registering officer.

32. The

32. The Registering officer shall thereupon inspect the certificate given under section thirty, and the license of the recruiter, and, if he finds that such certificate has been duly given and that the recruiter is duly licensed, shall then examine such person, with reference to his intended labour-contract, and explain the same to him.

Intending labourer to be examined by Registering officer.

If it appears that such person is competent to enter into such contract, and understands the same as regards the locality, period and nature of the service, and the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation or mistake, and that he is willing to fulfil the same, the Registering officer shall register in a book to be kept for the purpose such particulars regarding him and the persons (if any) whom he wishes to have registered as his dependents as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

Intending labourer to be registered.

33. The Registering officer shall furnish to the person so registered a certified copy of such particulars written on substantial paper.

Copy of registration to be given to labourer.

34. Every officer registering any person under section thirty-two shall forthwith forward a certified copy of such particulars and the original certificate of the medical officer regarding him to the Superintendent having jurisdiction over the depôt to which such person is to proceed.

Copy of registration and medical certificate to be sent to Superintendent.

35. For every such person produced before a Registering officer for the purpose of being registered as a labourer the recruiter shall pay to the officer such fee not exceeding one rupee as the Local Government may by rule direct.

Fee for registration.

36. No recruiter shall remove or attempt to remove any person to a depôt, or induce or attempt to induce him to go to a depôt, or to leave the local limits of the jurisdiction of the Registering officer before whom

Recruiter when to remove person to depôt.

such

such person ought to be brought under section thirty-one, or aid or attempt to aid him in going to a depôt, or leaving any such local limits, unless and until such person has been registered under section thirty-two.

Conveyance of labourer to depôt.

37. Every labourer shall, after he has been registered under section thirty-two, be conveyed with all convenient despatch by the recruiter by whom he has been engaged to the depôt established by the contractor on whose behalf such recruiter has been licensed.

Recruiter to accompany labourer or depute person approved by Registering officer.

All labourers shall, while proceeding to the depôt, be accompanied throughout the journey either by the recruiter himself, or by a competent person deputed by him with the approval of the Registering officer by whom such labourers have been registered. The Registering officer shall give to the person so deputed a certificate under his signature, stating that he has been deputed for the journey to the depôt.

Recruiter must provide food and lodging for labourer on journey.

38. Every recruiter or person deputed by him as aforesaid shall, throughout the journey to the depôt, provide such labourer and his dependents (if any) with proper and sufficient food and lodging.

D.—Procedure at Contractors' Depôts.

Contractor to report arrival of labourer.

39. Within twenty-four hours after a labourer arrives at a depôt, the contractor by whom such depôt is maintained, or the person in charge thereof, shall give to the Superintendent, within the local limits of whose jurisdiction such depôt is situate, a notice in writing of such arrival, which notice shall be in such form, and shall contain such particulars, as the Local Government may by rule prescribe.

Duties of Medical Inspector.

40. The Medical Inspector shall, as soon as may be after the labourer arrives at the depôt, examine such labourer and his dependents (if any) to ascertain that they are in a fit state of health to undertake the journey to the labour-district to which they intend to proceed.

The Medical Inspector shall give a certificate to the Superintendent stating whether he is or is not satisfied

satisfied of the fitness of the labourer and his dependents (if any) to undertake such journey.

41. If the Medical Inspector gives a certificate of fitness under section forty with respect to any labourer, and in the opinion of the Superintendent there is no valid reason why such labourer should not enter into a labour-contract, such labourer and the employer with whom he intends to contract, or the agent of such employer, shall, within thirty days after the arrival of the labourer at the depôt, execute a labour-contract in the presence of the Superintendent.

If certificate of fitness granted, labourer to enter into labour-contract.

42. Before the labourer executes such contract, the Superintendent shall personally explain it to him, and shall, after the same has been executed by such labourer and his employer, or the agent of such employer, attest such contract and certify at the foot thereof that he has personally explained the same to the labourer.

Contract to be explained to labourer by Superintendent.

An abstract of every such contract shall be entered in a register to be kept by the Superintendent for the purpose; and after such abstract has been so entered, one copy of the contract shall be given to to the labourer and the other to his employer or his employer's agent. 42 A 42 B

Abstract to be made of contract, and copies of contract given to labourer and employer.

43. In the following cases (namely):—

(*a*) where the Medical Inspector, on making the examination required by section forty, or at any subsequent time during the stay at the depôt of any labourer, finds that such labourer is or has become unfit to undertake the journey to the labour-district to which he intends to proceed, and the Superintendent considers that such labourer has not dishonestly represented himself as fit to undertake such journey, or

(*b*) where the Superintendent finds that any such irregularity has occurred in the recruitment or treatment by the recruiter of any such labourer as makes it just to refuse to permit a labour-contract to be executed or to rescind such contract if executed, or

Power to cancel contract and order payment of expenses home of labourer in certain

(*c*) where

(*c*) where the contractor on whose behalf or by whom the labourer has been registered does not within thirty days after the arrival of such labourer at the depôt tender to him a labour-contract for execution under section forty-one, or the employer or his agent refuses or neglects to execute such contract as required by that section,

the Superintendent may cancel the labour-contract executed by such labourer, and in that case, or if no labour-contract has been executed, may order the contractor at once to pay such labourer such reasonable sum as is necessary to enable him to return to the place at which he was registered, and such further sum by way of compensation as the Superintendent thinks reasonable; and may take any other steps he thinks necessary for the conveyance of such labourer to such place.

Labourer when to be lodged, &c., at depôt till he can return home.

44. Any labourer who from his state of health is, in the opinion of the Medical Inspector, unfit to undertake such return-journey, shall be entitled to be fed, lodged, clothed and (if necessary) medically treated at the depôt at the expense of the contractor by whom such depôt is maintained, until he is reported by the Medical Inspector to be fit to undertake such return-journey.

Contractor omitting to provide food, &c., for labourer.

If such contractor negligently or wilfully omits to provide food, lodging, clothing or medical treatment for such labourer, the Superintendent may order the contractor at once to pay such reasonable sum as is necessary to provide such food, lodging, clothing or medical treatment.

Like provisions in case of dependents and relatives.

45. When an order is made under section forty-three with reference to any labourer, any person registered as his dependent, or any labourer being the wife, husband, son or daughter of such labourer, may claim—

(*a*) to be conveyed at the expense of the contractor with such labourer to the place at which he was registered, and

(*b*) if such labourer is unable to travel, to be fed, lodged,

lodged, clothed and (if necessary) medically treated in the depôt at the expense of the contractor until such labourer is able to travel;

and the Superintendent may include such expenses in an order made under section forty-three or section forty-four with respect to such labourer.

Compensation to labourer for ill-treatment on the journey.

46. If, upon the arrival of any labourer at a depôt, it appears that during the journey to the depôt such labourer or any person registered as his dependent has suffered any ill-treatment at the hands of the recruiter or person deputed by him to accompany such labourer, or that such recruiter or such person has failed to provide the labourer or any person registered as his dependent with proper and sufficient food and lodging, the Superintendent may order the contractor by whom such depôt is maintained to pay such labourer a reasonable sum by way of compensation.

Procedure when dependent declared unfit to proceed to labour-district.

47. If the Medical Inspector has reason to think that any person registered as the dependent of a labourer is not in a fit state of health to undertake the journey to the labour-district to which the labourer whose dependent he is intends to proceed, the Medical Inspector shall so certify to the Superintendent to whom notice of the arrival of such labourer was given. The provisions of sections forty-three and forty-four shall thereupon apply to such dependent as if he were a labourer, and the Superintendent may make such orders regarding him as he may make under those sections with regard to a labourer.

Labourer and relatives entitled to be returned with dependent.

48. The labourer to whom such dependent is attached shall thereupon be entitled, if he or she so wishes, and if he or she be the husband, wife, son or daughter of such dependent, to receive from the contractor at whose depôt he or she arrived such reasonable sum as is necessary to enable him or her to return to the place where he or she was registered. If such labourer so return, then any other persons registered as his or her dependents, and any other labourer being the wife, husband, son or daughter of such

labourer,

labourer, shall also be entitled to receive a like sum from such contractor.

Failure of contractor to pay sums ordered to be paid under section 43, 44, 45, 46, 47 or 48.

49. On failure of the contractor for twenty-four hours to comply with an order of the Superintendent to pay any sum ordered to be paid under section forty-three, section forty-four, section forty-five, section forty-six, section forty-seven or section forty-eight, the Superintendent may pay the same to or on behalf of the labourer or dependent.

Every sum so paid shall be recoverable from the contractor with interest thereon at the rate of twelve per cent. per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Superintendent gave the contractor an order to pay such sum, and that the contractor for twenty-four hours failed to comply with such order.

Provisions for way-bill.

50. All labourers despatched from a contractor's depôt to a labour-district shall during their journey be accompanied by a person appointed by such contractor. Such person shall take with him a way-bill in such form and containing such particulars and instructions as the Local Government may prescribe.

He shall also present such way-bill at all such places and to all such officers as may be thereupon indicated; and shall carry out all instructions contained therein for his guidance.

CHAPTER IV.

RECRUITING BY GARDEN-SARDÁRS AND LOCAL AGENTS.

A.—Garden-sardárs.

Employer may grant certificate to garden-sardár.

51. Any employer may grant to any person a certificate authorizing him, within such local area as may be specified in such certificate, to enter into labour-contracts with persons desirous of becoming labourers upon any estate of which such employer is in charge.

Every person to whom such certificate has been granted is hereinafter called a garden-sardár.

If

If any labourer is granted a certificate under this section, his employment as a garder-sardár shall be deemed to be employment under his labour-contract.

Form and particulars to be contained in such certificate.

52. Every such certificate shall be in such form and shall contain such particulars as the Local Government of the territories in which it is granted may prescribe in this behalf.

Any employer granting a certificate to a garden-sardár may, before such certificate is accepted and signed as hereinafter provided, specify therein the name of the local agent (if any) to whom such garden-sardár is to report himself for orders, and the time within which he is to return to such employer, and any other instructions for his conduct that he may think proper.

Certificate to be accepted and signed in presence of Inspector or Magistrate.

53. Every such certificate shall be accepted and signed by the garden-sardár in the presence of the Inspector or a Magistrate having jurisdiction over the place where the employer granting such certificate resides.

Inspector or Magistrate to countersign certificate.

54. Such Inspector or Magistrate shall inquire into the facts stated in such certificate; and upon being satisfied of the truth of the statement shall, unless it appears to him that the person so accepting and signing such certificate is by character or from any other cause unfitted to be a garden-sardár, countersign and date such certificate.

Provision for grant of fresh certificate.

55. On the application of the employer by whom any certificate so countersigned has been granted to a garden-sardár, such Inspector or Magistrate may, without requiring the appearance of the garden-sardár or making the inquiry prescribed by section fifty-four, countersign a fresh certificate to be granted by such employer to such garden-sardár in renewal of any existing certificate.

Such fresh certificate to be forwarded to Magistrate of district where garden-sardár is employed, and to be accepted and

Every such fresh certificate shall be forwarded by the Inspector or Magistrate countersigning it to the Magistrate of the district in which the garden-sardár to whom it is granted is employed; and such sardár shall, on receiving notice from such Magistrate, appear before

signed by garden-sardár.

before him and accept and sign such fresh certificate in his presence.

Certificate when to come into force.

56. No certificate granted to a garden-sardár shall come into force unless and until it has been accepted and signed by the garden-sardár and countersigned by the Inspector or Magistrate, and no such certificate shall continue in force for a longer period than one year from the date of its countersignature.

Accommodation to be provided by garden-sardár.

57. Every garden-sardár shall provide sufficient and proper accommodation in a suitable place for such labourers, or persons intending to become labourers, as may be collected by him pending their removal to a labour-district.

The Magistrate of a district or of a division of a district, or a Magistrate subordinate to him, or an officer of police above the rank of sub-inspector authorized by him in this behalf, shall visit and inspect such accommodation; and all garden-sardárs or other persons in charge of such places shall afford to such Magistrate, Subordinate Magistrate or officer of police every facility for making such visits and inspections.

In every such place the garden-sardár providing the accommodation shall make such sanitary arrangements as the Local Government may prescribe.

Certificate may be cancelled in certain cases.

58. Whenever a garden-sardár contravenes any of the provisions of this Act or the rules made hereunder, or is guilty of any other misconduct, any Magistrate, Superintendent or Inspector, within the local limits of whose jurisdiction such garden-sardár is employed, may cancel his certificate.

B.—Local Agents.

Local agents may be licensed.

59. Any Superintendent authorized in this behalf by the Local Government may, on the application of any employer, grant licenses to persons to be local agents for the purpose of representing such employer within such local area and for such period as such employer may desire: Provided that no contractor shall be licensed as a local agent.

Powers and duties of local agents.

60. A local agent may within such local area represent his employer in all matters connected with the

the engagement of labourers; and shall furnish such information and make such returns as the Local Government may by rule direct.

Local agent may represent more than one employer.

61. The Superintendent authorized as aforesaid may, on the application of any employer other than the employer on whose application a local agent has been licensed, make an order in writing permitting such agent to become the local agent of such additional employer within the local area for which he was licensed. The Superintendent making such order shall forthwith send a copy thereof to the Magistrate of the district in which such agent resides; and such Magistrate shall, on the agent's application, insert in his license the name of such additional employer.

Local agent may be specially licensed to contract direct with labourers.

62. Any Superintendent authorized as aforesaid may, with the consent of all the employers of a local agent, grant a special license to such agent, permitting him to engage on behalf of any employer specified in such special license, but without the intervention of a garden-sardár, persons to be labourers.

Every agent when so engaging persons to be labourers may, if he thinks fit, appear with them for registration before a Registering officer, and require them when so registered to execute a labour-contract, and in such case shall for the purposes of this Act be deemed to be a garden-sardár.

Local agent may prosecute garden-sardár.

63. When any garden-sardár to whom a certificate has been granted under this Act by any employer commits any offence punishable under this Act, any local agent of such employer may prosecute the sardár for such offence.

On what grounds local agent's license may be cancelled.

64. The Magistrate of any district within which a local agent acts as such may by order cancel the license of such local agent if the employer so require, or if it is shown to the satisfaction of such Magistrate that such local agent has—

(*a*) employed any contractor's recruiter to engage on his behalf persons to be labourers; or

(*b*) permitted persons engaged as labourers by or on behalf of any contractor to use the accommodation

provided

provided for the persons engaged as labourers by any garden-sardár under such local agent's control; or

(*c*) allowed any garden-sardár under his control to transfer persons engaged as labourers by such sardár to contractors or to their recruiters or to any employer other than the employer by whom such sardár's certificate was granted; or

(*d*) himself taken over persons engaged as labourers by any garden-sardár with intent to despatch them to any employer other than the employer by whom such sardár's certificate was granted.

An appeal shall lie to the Local Government from any order made under this section, clause (*a*), (*b*), (*c*) or (*d*). Such appeal must be presented within three months next after the date of the order, and the decision of the Local Government thereon shall be final.

C.—Procedure to be followed by Garden-sardár.

Garden-sardár and labourer to appear before Registering officer for registration.

65. Every garden-sardár who desires to engage any person as a labourer shall appear with such person, together with any persons about to proceed to a labour-district as dependents of such person, before the Registering officer having jurisdiction within the local area specified in the certificate of such sardár.

Registration of persons engaged by garden-sardár.

66. The Registering officer shall thereupon inspect the certificate of the garden-sardár, and, if he finds that such certificate is in force, shall examine, with reference to the intended labour-contract, the person whom the sardár so desires to engage and explain the contract to such person.

If it appears that such person is competent to enter into such contract, and understands the nature of the same, as regards the locality, period and nature of the service, and the rate of wages and the price at which rice is to be supplied to him, that the terms thereof are in accordance with law, that he has not been induced to agree to enter thereinto by any coercion, undue influence, fraud, misrepresentation or mistake, and that he is willing to fulfil the same, the Registering officer shall register in a book to be kept for

for the purpose such particulars regarding him and his dependents (if any) as the Local Government may by rule prescribe; and the labourer and his dependents (if any) shall thereupon be deemed to be registered under this Act.

Medical examination.

67. If it appears to such officer that any such person, or any dependent of such person, is not in a fit state of health to undertake the journey to the labour-district to which he intends to proceed, the officer may, before registering any such person or dependent, if himself a medical man, medically examine such person or dependent, or, if not himself a medical man, send such person or dependent to a medical man for such examination. If upon such examination such person or dependent is declared unfit to undertake the journey to such place, the officer may refuse to register such person or dependent.

Fee to be paid for every labourer produced for registration.

68. For every person appearing before a Registering officer for the purpose of being registered as a labourer, the garden-sardár who appears with him shall pay to the officer such fee not exceeding one rupee as the Local Government may direct.

Labour-contract to be executed.

69. When any person has been registered under section sixty-six as a labourer he shall, within fifteen days from the day on which he was so registered, execute a labour-contract with the employer with whom he intends to contract. Such contract shall be signed in the presence of the Registering officer by such person and, on behalf of the employer, by the garden-sardár who appears with such person before such officer. The officer shall satisfy himself that the contract is in accordance with any instructions specified in the certificate of the garden-sardár. If the officer is so satisfied, he shall, before the labourer signs the contract, personally explain it to him, and shall, after the same has been executed as aforesaid, attest such contract and certify at the foot thereof that he has personally explained the same to the labourer.

An abstract of every such contract shall be entered in a register to be kept for the purpose by the Registering officer, and, of the two copies of the contract, one

one shall then be given to the labourer and the other to the garden-sardár or the local agent.

If any garden-sardár, without reasonable cause, refuses or neglects to execute a contract with a labourer as required by this section within fifteen days from the day on which he was so registered, the Registering officer may order such sardár to pay to the labourer such reasonable compensation, not exceeding twenty rupees, as such officer thinks fit.

Procedure when employer requires medical examination previous to registration.

70. If the employer of a garden-sardár has in the instructions specified in the certificate of the sardár directed that all labourers engaged by him shall before registration be examined by a competent medical man and certified by him to be in a fit state of health to undertake the journey to, and labour in, the labour-districts to which they intend to proceed, no Registering officer shall register as a labourer any person appearing before him with such sardár until such certificate from such medical officer as aforesaid has been produced and shown to him.

Medical officer entitled to fee.

71. If the employer has in the instructions specified in the certificate of the garden-sardár directed that such examination shall be made by any medical officer in the service of Government, such officer making the examination shall be entitled to receive from the local agent or sardár such a fee not exceeding eight annas for each labourer so examined as the Local Government may fix.

Garden-sardár when to remove labourer to labour-district.

72. Unless and until a person engaged as a labourer has been registered under section sixty-six no garden-sardár shall remove or attempt to remove him to a labour-district, or induce or attempt to induce him to go to a labour-district, or to leave the local area specified in the certificate of such sardár, or aid or attempt to aid him in proceeding to a labour-district, or in leaving any such local area.

Garden-sardár to accompany labourers or send competent person with them.

73. A garden-sardár shall either himself accompany labourers engaged by him throughout their journey from the place in which the labour-contract was entered into to the labour-district wherein they have

have contracted to labour, or shall send with them some competent person appointed by him with the approval of the local agent of his employer; or, if his employer has no local agent, with the approval of the officer by whom such labourers were registered.

When the number of labourers (exclusive of dependents) proceeding on their journey to such labour-district is more than twenty, for every twenty labourers so in excess, or for any number of labourers less than twenty so in excess, one additional garden-sardár or person so appointed by him shall accompany the labourers so proceeding.

No restriction on number of persons engaged by garden-sardár.

74. A garden-sardár may, subject to the instructions specified in his certificate, engage any number of persons as labourers; and subject to the provisions of section seventy-three, any number of labourers may be despatched at the same time to the labour-districts.

In certain cases garden-sardár may be appointed to accompany labourers not engaged by him.

75. Any garden-sardár may, with the previous consent in writing of the local agent of the employer by whom his certificate was granted, or, if such employer has no local agent, with the previous consent in writing of such employer, be appointed under section seventy-three as a competent person to accompany labourers other than those engaged by him.

Provision for way-bill.

76. Every garden-sardár or person appointed by him as aforesaid who accompanies labourers to the labour-districts shall present to the officer by whom such labourers have been registered a way-bill in such form and containing such particulars and instructions as the Local Government may prescribe. He shall also present such way-bill at all such places and to all such officers as may be thereupon indicated; and shall carry out all instructions contained therein for his guidance.

Garden-sardár must provide food and lodging for labourers and dependents on journey.

77. Every garden-sardár or person appointed by him as aforesaid who accompanies labourers to the labour-districts shall provide such labourers and their dependents (if any) with proper and sufficient food and lodging throughout the journey.

78. If

If such not provided, Magistrate may award compensation or cancel contract.

78. If it appears to any Magistrate, on the complaint of any such labourer at any place on the journey, that he or any person registered as his dependent has suffered any ill-treatment during the journey at the hands of the garden-sardár or person appointed by him accompanying such labourer, or that such sardár or person has failed to provide such labourer or any of his dependents with proper and sufficient food and lodging, or has wilfully abandoned such labourer or any of his dependents, such Magistrate may either order the sardár or person so appointed to pay to such labourer a reasonable sum by way of compensation, or may cancel the labour-contract entered into by such labourer and order such sardár or person to pay to such labourer such reasonable sum as is necessary to enable him with his dependents (if any) to return to the place at which he was registered.

Procedure on failure of garden-sardár to comply with order.

79. On failure for twenty-four hours by any garden-sardár or person appointed by him as aforesaid to comply with an order under section seventy-eight to pay any sum, the Magistrate may pay the same to or on behalf of such labourer.

Every sum so paid shall be recoverable from the employer by whom the certificate of such garden-sardár was granted, or from the local agent of such employer, with interest thereon at the rate of twelve per centum per annum from the date of payment.

No further proof shall be required by any Court in any such case than that the Magistrate gave such garden-sardár or person an order to pay such sum and that such garden-sardár or person for twenty-four hours failed to comply with such order.

Medical inspection of labourers *en route.*

80. Any Magistrate or any Embarkation Agent may, if himself a medical man, examine, and if not himself a medical man, send for examination by a medical man, any labourer or dependent who, while on the journey to the district to which he intends to proceed, appears to such Magistrate or Agent not to be in a fit state of health to proceed thereto.

Detention and return of labourer de-

81. If such labourer or dependent is on such examination declared not to be in a fit state of health

to

to undertake the journey to the labour-district to which he intends to proceed, the Magistrate or Embarkation Agent may order him to be detained at such place as he thinks fit until the labourer or dependent is in a fit state of health to undertake such journey, when he shall either be forwarded to such district or sent back to the place where he was registered, according as the garden-sardár or person appointed by him accompanying such labourer or dependent, or the employer by whom the certificate of such sardár was granted, or his local agent, may direct.

clared when *en route* to be unfit to travel.

While any labourer or dependent is so detained he shall be entitled to be fed, lodged, clothed and (if necessary) medically treated at the cost of the employer with whom such labourer or the labourer to whom such dependent is attached has contracted to labour.

82. When an order under section eighty-one has been made with reference to any labourer, any person registered as his dependent, and any labourer being the wife or husband of such labourer, shall be entitled,

Dependents of labourer when to be fed, &c.

(*a*) until such labourer is in a fit state of health to undertake such journey, to be fed, lodged, clothed and (if necessary) medically treated at the place where such labourer is detained and at the cost of the employer with whom such labourer has contracted to labour, and

(*b*) if such labourer is sent back to the place where he was registered, to be sent back to such place.

When any such order has been made with reference to any dependent, the labourer to whom he is attached shall thereupon, until such dependent is in a fit state of health to undertake the journey to the labour-district, be entitled, if the labourer so wishes, and, if he or she be the husband, wife, son or daughter of such dependent, to be fed, lodged, clothed and (if necessary) medically treated at the place where such dependent is detained, and at the cost of the employer with

Labourer to whom dependent is attached when to be fed, &c.

with whom such labourer has contracted to labour; and if such dependent is sent back to the place where he was registered, such labourer shall, if he or she so wishes, and if he or she be the husband, wife, son or daughter of such dependent, be sent back to such place.

If such labourer is entitled and claims to be so fed, lodged, clothed and (if necessary) medically treated, or to be so sent back, any person registered as his or her dependent, and any other labourer being the wife or husband of such labourer, shall be entitled, as the case may be,

(*a*) to be fed, lodged, clothed and (if necessary) medically treated at the place where such dependent is detained and at the cost of such employer until such dependent is in a fit state of health to undertake the journey to the labour-district, or

(*b*) to be sent back to the place where he or she was registered.

Payment of expenses of detention and return-journey of labourer.

83. If the garden-sardár or person appointed by him accompanying any labourer or dependent fails to provide such labourer or dependent with food, lodging, clothing and medical treatment, or to send him back as required by section eighty-one or section eighty-two, the Magistrate or Embarkation Agent may order such sardár or person to pay such sum as is necessary to provide such food, lodging, clothing and medical treatment, or to defray the cost of the return-journey of such labourer or dependent, as the case may be, to the place where he was registered; and, on failure for twenty-four hours of such sardár or person to comply with such order, he may pay the sum specified in the order to or on behalf of such labourer or dependent.

The provisions of section seventy-nine shall, *mutatis mutandis*, apply to the recovery of sums paid by the Magistrate or Embarkation Agent under this section.

Agent in Calcutta may procure order from Superintendent

84. If any labourer whose labour-contract has been executed by a garden-sardár on behalf of his employer is brought to Calcutta on his way to the district

district in which he has contracted to labour, any person empowered to act as the agent or representative of such employer may require such labourer to appear before the Superintendent for the cancellation of such contract. If such reasonable sum as is necessary to enable such labourer and his dependents (if any) to return to the place at which he was registered be paid to such labourer in his presence, the Superintendent may declare the contract cancelled, and in that case shall make an endorsement to that effect on the labourer's copy of the contract, and attest it with his signature.

cancelling the labour-contract on payment of expense of return.

85. When the Superintendent declares the labour-contract of any labourer to be cancelled, any other labourer who is the wife, husband, father, mother, son or daughter of such labourer, and who may have entered into a labour-contract at the same place with the same employer, may claim to have her or his labour-contract cancelled at the same time. On such claim being made, the Superintendent shall declare the labour-contract of the claimant to be cancelled, and shall order the agent or representative of the claimant's employer to pay to the claimant such reasonable sum as is necessary to enable him and his dependents (if any) to return to the place at which he was registered.

In that case contracts of relatives to be cancelled.

On failure for twenty-four hours of the agent or representative to comply with such order, the Superintendent may pay the sum specified in the order to or on behalf of the claimant; and the provisions of section seventy-nine shall, *mutatis mutandis*, apply to the recovery of any sum so paid.

CHAPTER V.

TRANSPORT BY RIVER.

A.—Passenger-vessels.

86. Nothing in this chapter shall apply to the transport by sea of natives of India to the labour-districts of Chittagong and the Chittagong Hill Tracts.

Transport by sea to Chittagong.

87. No

Vessels to carry more than 20 passengers must be licensed.

87. No master shall receive more than twenty passengers being natives of India on board his vessel for the purpose of transporting them to a labour-district unless a license to carry passengers in such vessel has been granted to him by an Embarkation Agent duly empowered in that behalf by the Local Government.

Power to exempt vessels.

The Local Government may, by notification in the official Gazette, exempt from the provisions of this section any vessel or class of vessels.

Application for license.

88. The master or owner of any vessel who desires to obtain a license under this Act to carry passengers in such vessel shall make a written application for a license to an Embarkation Agent empowered as aforesaid.

Contents of application.

Every such application shall state such particulars respecting the vessel as the Local Government may by rule prescribe.

Grant of license.

89. If such Embarkation Agent is of opinion that the vessel is in all respects suitable for carrying passengers being natives of India to a labour-district, he shall give to the master of the vessel a license to carry passengers therein, specifying the number of passengers being natives of India which may be received on board.

Fee for license.

90. Such fee, not exceeding sixteen rupees, as the Local Government may with reference to the size of such vessel by rule direct shall be paid for every such license. No such license shall be in force for more than one voyage:

Provision for annual licenses.

Provided that the Embarkation Agent may, from time to time, with the previous sanction of the Local Government, grant a license to the master of any vessel for any term not exceeding one year, on payment of such fee not exceeding one hundred rupees, and on such conditions, as the Local Government may by rule direct.

Embarkation Agent may limit number to be received

91. Any Embarkation Agent may, in accordance with such rules as the Local Government may prescribe in this behalf, direct by order in writing that, on any

any particular voyage or part of a voyage, any master licensed hereunder shall not receive on board his vessel more than a specified number of passengers being natives of India, which number shall be less than the number specified in the license granted to such master.

on board on any particular voyage.

92. In computing the number of persons on board of any vessel, two children under the age of ten years shall for the purposes of this Act be reckoned as one person only.

Two children under ten to be counted as one person.

93. Every master to whom a license is granted hereunder shall keep such lists, submit such returns and make such reports in regard to the passengers carried in his vessel as the Local Government may by rule prescribe.

Master to make returns.

94. Every such master shall have on board his vessel carrying labourers and their dependents such supplies of provisions and clothing, and such medical and other officers, cooks and attendants, as the Local Government may by rule prescribe.

Provisions, clothing, medical and other officers, cooks, &c.

95. No medical officer shall be appointed to any vessel in respect of which a license is granted hereunder unless he holds a license granted by such authority as the Local Government may appoint in that behalf; and any medical officer so licensed shall be forthwith removed from his appointment on the requisition of any officer empowered by the Local Government to make such requisition.

Medical officer to be licensed.

B.—Departure of Passenger-vessels and Procedure during Voyage.

96. Whenever it appears to any Embarkation Agent that the departure of any vessel in respect of which a license is granted hereunder is unduly delayed beyond the date fixed by order of a Superintendent or the Local Government, or notified by advertisement in the public press, for such departure, he may order the master of such vessel to proceed on his voyage at once.

Embarkation Agent may order departure of vessel if delay occurs.

97. No master licensed hereunder shall proceed on a voyage with his vessel carrying labourers until he

Master to receive way-bills from

Embarkation Agent.

he has received from the Embarkation Agent the way-bills relating to all labourers on board. The Embarkation Agent and the master of the vessel shall together personally ascertain that the number of labourers on board corresponds with the number entered in such way-bills.

The Embarkation Agent shall send a copy of such way-bills to the Magistrate of the labour-district to which such labourers are proceeding.

Labourers not allowed finally to leave vessel at any place other than that mentioned in way-bill.

98. No such master shall cause or permit any labourer finally to leave his vessel at any place other than that named in the way-bill as the destination of such labourer :

Provided that this section shall not be deemed to prevent the master of any vessel from permitting such labourers to disembark at any place or places on the voyage so long as such disembarkation is not intended or known to be likely to be final, nor to prevent the final disembarkation of any such labourers, or the transfer of such labourers with their dependents to any other vessel in case of accident or other unavoidable necessity. Such accident or necessity shall be forthwith reported by the master to the Embarkation Agent by whom he was licensed, and to the nearest Magistrate in the district within which such accident has occurred or necessity has arisen.

Master to stop his vessel at certain places where there is a Magistrate.

99. Every master licensed hereunder shall stop his vessel carrying passengers being natives of India at such places, being places where a Magistrate is stationed, and shall, unless the Magistrate permits him to depart earlier, remain at each such place for such time, not exceeding six hours of daylight, as the Local Government may direct. Such master shall, on arriving at any such place, immediately report to the Magistrate the number of the crew and other persons on board, the general state of their health, and the number of deaths (if any) which have occurred among the persons who embarked on board his vessel.

Magistrate may at any time inspect vessel.

100. A Magistrate may, while any vessel in respect of which a license is granted hereunder is within the

the local limits of his jurisdiction, go on board such vessel and inspect the vessel and all persons being natives of India on board. The master and officers of such vessel shall afford to such Magistrate every facility for such inspection, and give him all such information as he may reasonably require respecting the labourers or other persons on board, the deaths, if any, which may have occurred on board, and any other facts which may affect the health of the passengers.

Master bound to give all information required.

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101. At any time while any such vessel is within the local limits of his jurisdiction, the Magistrate may regulate the communication between such vessel and the land, and may prohibit all persons from leaving such vessel and all persons on land from proceeding on board her.

Magistrate may regulate communication between vessel and land.

102. Any Magistrate may, if he has reason to believe that any passengers being natives of India on board any such vessel within the local limits of his jurisdiction are, or are likely to be, affected with any dangerously infectious or contagious disease, detain such vessel and require the civil medical officer of the district or other qualified medical officer to inspect such passengers and to report on their health, stating whether any or what measures are requisite for the removal or prevention of such disease. After the receipt of such report, the Magistrate may order any such passenger suffering from any such disease to be disembarked and detained for medical treatment. If in the opinion of the inspecting medical officer it is dangerous to the health of the general body of the passengers to allow such vessel to proceed until measures have been taken to cleanse and disinfect her, the Magistrate may detain the vessel for a further period, not exceeding three days, for the purpose of carrying out such measures.

Magistrate may detain vessel for inspection and for removal of disease, and may detain sick native passengers.

103. If, on receiving a report of a medical officer, it appears to a Magistrate that any labourer or any dependent of any labourer, though not suffering from any such disease as last aforesaid, is not in a fit state of health to proceed to the labour-district in which such

Magistrate may detain sick labourers;

and shall arrange for their accommodation and treatment.

such labourer has contracted to labour, he may order such labourer or dependent to be detained, and shall cause all necessary arrangements to be made for the accommodation, support and medical treatment of the labourer or dependent so detained.

Expenses how to be recovered.

104. All expenses incurred under section one hundred and three by a Magistrate in respect of any labourer or dependent so detained shall be recoverable from the employer of such labourer together with interest at six per centum per annum.

Measures to be taken if excess number of native passengers is found on board.

105. Whenever it appears to a Magistrate making an inspection of any vessel in respect of which a license is granted hereunder that the number of passengers on board being natives of India is larger than the number specified in such license or than the number specified in an order of an Embarkation Agent made under section ninety-one, he may remove the excess number and detain them until another opportunity of forwarding them to their destination is found. The necessary expense of maintaining such passengers while so detained and of forwarding them to their destination shall be paid by such Magistrate, and shall be recoverable from the master or owner of such vessel.

Infraction of the Act and rules to be reported.

106. Whenever, on making an inspection of any vessel in respect of which a license is granted hereunder, a Magistrate finds that any of the provisions of this Act or of any rule of the Local Government made hereunder have not been complied with in respect of such vessel, he shall report the same to the Embarkation Agent by whom such license was granted; and, if he considers it necessary to do so, he may detain the vessel until such provisions have been so complied with as to make it possible for the voyage to be further prosecuted with safety and reasonable comfort to the emigrants.

Vessel may be detained.

Power to make rules regulating disembarkation and other matters.

107. The Local Government may make rules regulating—

(*a*) the disembarkation of labourers and their dependents, and their inspection and accommodation on arrival at their destination:

(*b*) the

(*b*) the detention of such labourers or dependents at debarkation-depôts:

(*c*) the forwarding of labourers to their destination and the closing and return of way-bills by employers.

All expenses incurred by any Magistrate or Debarkation Agent in accordance with such rules shall be recoverable from the employers of such labourers together with interest at the rate of twelve per centum per annum.

108. The Magistrate of a district, or of a division of a district, may from time to time authorize any subordinate Magistrate, medical officer or officer of police above the rank of sub-inspector to exercise the powers and authorities conferred, and to perform the duties imposed, on a Magistrate under sections ninety-nine to one hundred and six, both inclusive.

Magistrate may depute a subordinate Magistrate to discharge the functions of the Magistrate.

CHAPTER VI.

Provisions as to the Labour-districts.

A.—Annual Rate payable by Employers.

109. Every employer shall, on the first day of January and the first day of July in each year, pay in respect of each labourer then in his employ such rate, not exceeding an annual sum of one rupee, as the Local Government may by notification in the official Gazette direct.

Annual rate payable by employer.

110. If any employer fails, for the space of one month after the receipt of a notice in such form and served in such manner as the Local Government may prescribe, to pay any sum due by him under the provisions of the last preceding section, such sum shall be recoverable as if it were an arrear of land-revenue due from such employer.

Payment of rate how to be enforced.

B.—Local Labour-contracts.

111. Notwithstanding anything hereinbefore contained,

Labour-contracts made within

labour-districts.

tained, any employer may enter into a labour-contract with any native of India within a labour-district. When any employer has executed any such contract with any such native within a labour-district, he shall, within one month from the date of the execution of such contract, forward it in duplicate to the Inspector within the local limits of whose jurisdiction such employer resides. On receipt of the contract so forwarded, the Inspector shall enter an abstract thereof in a register to be kept by him for the purpose, and shall then give one copy of the contract to the labourer and the other copy to his employer.

Registration of such contracts.

When such contracts may be cancelled.

When, for the first time after the registration of any such contract with a labourer, the Inspector visits the estate on which such labourer is employed, the employer shall cause such labourer to appear before the Inspector, and such labourer may thereupon apply to the Inspector to cancel the contract; and, if he shows cause sufficient in the opinion of the Inspector to justify the cancellation, the Inspector may cancel the contract, and shall thereupon endorse on the labourer's copy of the contract, or if such copy be not forthcoming, shall give to the labourer, a certificate of such cancellation.

Execution of labour-contract before Inspector or Magistrate.

112. Any employer desirous of entering into a labour-contract with any native of India in a labour-district may, instead of executing such contract under section one hundred and eleven, appear either in person or by agent with such native before the Inspector or Magistrate within the local limits of whose jurisdiction such employer resides.

Such Inspector or Magistrate shall thereupon explain the labour-contract to such native, and shall, if satisfied that he is competent to enter into and understands the same, call upon him and the employer or his agent to execute it in his presence; and, if they execute it, shall attest such execution with his signature.

An abstract of every such labour-contract shall be entered in a register to be kept by the Inspector or Magistrate for the purpose; and one copy of such contract

contract shall then be given to the labourer and the other copy to his employer or his agent.

In respect of every labour-contract an abstract whereof is registered under section one hundred and eleven or under this section, the employer who executes such contract in person or by agent shall pay to the Inspector or Magistrate such fee, not exceeding one rupee, as the Local Government may direct.

C.—Employers' Returns and Magistrates' Inspections.

Registers to be kept and returns made by employers.

113. Every employer shall keep such registers of all labourers and other persons employed on the estate of which he is in charge, in such form, and shall make to the Inspector within the local limits of whose jurisdiction such estate is situate such periodical returns in writing, as the Local Government may by rule prescribe. The Inspector may examine such registers and muster all labourers and other persons employed on any estate within such local limits, and may verify the accuracy of the entries in such registers, or in any prescribed periodical return.

Inspector and Magistrate may at any time inspect lands, &c., used by labourers, &c.

114. Any Inspector or Magistrate, or any person authorized by either of them in writing in this behalf, may at any time enter and inspect all lands and houses wholly or partially used by or for labourers, or by or for any other natives of India employed on any estate who are not natives of the labour-district in which such estate is situate, and may require that any labourer or other such native shall be brought before him, and that a copy of the labour-contract of any labourer shall be produced, and may make any inquiries which he thinks proper touching the condition or treatment of any labourer or other such native.

D.—Regulation of Labour.

Schedule of task-work to be prepared.

115. Every employer shall prepare a schedule specifying the daily task to be executed by each labourer employed on the estate of which such employer is in charge, and may from time to time alter any schedule so prepared.

One

One copy of every such schedule shall be filed in a book which shall be open to the examination of the Inspector, and another copy thereof in the Bengálí language shall be stuck up in some conspicuous place accessible to the labourers to whom such schedule relates.

The minimum payment for each daily task shall be the quotient resulting from dividing the monthly wage of the labourer concerned by the whole number of days in the current month.

Limitations and conditions of task work.

116. No labourer shall be bound to labour more than six days in one week, or more than six consecutive hours, or more than nine hours in any one day. Every labourer shall, for one day in each week, receive wages as for a full task done, without being required to labour for the same. The employer shall, on six days in each week, provide for each labourer work sufficient to enable him to earn at least his minimum daily wage. Failing such due provision of work, the labourer shall, if he can show that he was able and willing to labour for the same, be entitled to claim his minimum daily wage.

Provisions for revision of schedule by Inspector subject to appeal to committee.

117. If the Inspector considers that any schedule of daily tasks, or any part thereof, is unreasonable, he may by order in writing direct that a reduction specified in such order be made of such tasks. The employer shall at once make such reduction, but may, if dissatisfied with the Inspector's order, by notice in writing require the Inspector to refer the schedule to a committee for consideration. Such committee shall consist—

(*a*) of the Inspector,

(*b*) of some person to be nominated by the employer whose schedule is to be considered, and,

(*c*) if practicable, of a medical officer.

Where the employer fails to nominate a person within seven days after being thereunto requested in writing by the Inspector, the Inspector, instead of the employer so failing, may nominate a person.

When the committee consists only of the Inspector and

and of a person nominated by the employer or Inspector, the Inspector shall have the casting vote.

118. If such committee, or a majority thereof, is of opinion that the daily tasks specified in such schedule or any of them are unreasonable, they shall modify and reduce them in such manner as they think fit. The employer shall thereupon alter his schedule accordingly, and copies of the schedule so altered shall be filed and stuck up in the manner directed in section one hundred and fifteen, and shall, as between him and the labourers concerned, take the place of the former schedule.

Committee to revise schedule.

119. Notwithstanding anything contained in any such schedule, the Inspector may order that any specified labourer, who is in his opinion unable from weakness to earn by his labour the sum of one anna and a half per diem, according to the said schedule, shall receive, in lieu of such actual earnings, subsistence-allowance at the rate of one anna and a half per diem, or diet on a scale to be approved by such Inspector. Such subsistence-allowance shall be recoverable as if it were an arrear of wages.

Provision for weakly labourers.

E.—Incapacity for Labour.

120. The Inspector within the local limits of whose jurisdiction any labourer is employed may release such labourer, for such period as he thinks fit, from performing his labour-contract, if he be, in the judgment of such Inspector, temporarily unfitted for the performance thereof by reason of sickness, or other sufficient cause.

Inspector may suspend contract of any labourer temporarily unfitted for labour.

Every such release shall be endorsed by the Inspector on the labour-contract, and the time during which the release continues shall not be reckoned as part of the term for which the labourer is bound to serve. Every such labourer shall, during such release, receive such subsistence-allowance from his employer as the Inspector thinks sufficient.

121. If any labourer is compelled to absent himself from work on account of sickness, he shall receive from his employer for each day of such absence subsistence-

Labourer absent from sickness.

sistence-allowance of one anna and a half, or, if in hospital, sick diet on a scale to be approved by the Inspector.

If such absence exceeds the total number of thirty days in any one year, and the employer, as soon as such number is exceeded, gives the labourer a notice in writing to that effect, each day of absence in excess of such number shall be added to the term of the labour-contract, unless the labourer refunds to the employer the sum of one anna and a half for each day so in excess. The Inspector shall from time to time, when visiting the estate, endorse on the labourer's labour-contract, after such enquiry as may be necessary, the number of days so added to the term thereof.

Discharge of labourer permanently incapacitated.

122. If, in the opinion of the Inspector, any labourer is permanently incapacitated for the performance of his labour-contract or any material part thereof, the Inspector shall certify to that effect in writing and deliver such certificate to the employer of such labourer or his agent, and from the date of such certificate the labour-contract of such labourer shall wholly determine. Every labourer whose labour-contract so determines shall be entitled to receive from his employer such sum, not exceeding three months' wages, as the Inspector may award.

Such sum and any subsistence-allowance mentioned in sections one hundred and twenty and one hundred and twenty-one shall be recoverable as if they were arrears of wages.

F.—Accommodation for Labourers.

House-accommodation, water-supply and sanitary arrangements to be provided.

123. Every employer shall be bound to provide for the labourers employed on the estate of which he is in charge such house-accommodation, water-supply and sanitary arrangements as the Local Government may by rule direct.

Supply of food-grain by employer.

124. When the food-grain commonly used by any class of labourers is not procurable by such labourers at reasonable prices in the local markets near the estate on which such labourers are employed, the

the employer of such labourers shall be bound to supply them with such grain at a reasonable price. The Local Government may by notification in the official Gazette determine, either generally or for each district or part of a district, what shall for the purposes of this section be deemed to be a reasonable price.

Provisions for rationing.

125. Subject to any rules which may be made by the Local Government in this behalf, any Inspector may, by order in writing,

(*a*) direct that, on any specified estate within the local limits of his jurisdiction, all the labourers or any specified class of labourers shall be furnished by their employer with rations, cooked or uncooked, on such scale, for such period not exceeding three months from the date of their arrival on the estate, as may be specified in such order;

(*b*) exempt any specified labourer from the effect of any such general order if he is satisfied that such labourer is able to earn a full wage and desires to provide himself with proper and sufficient food;

(*c*) direct that any specified labourer shall be furnished with rations for any term not exceeding six months, and renew any such order for a like term.

The cost of each labourer's ration furnished to him in accordance with any order made under this section shall be calculated at current rates as determined by the Inspector, and shall be deducted from any wages earned by the labourer during the period for which such order is in force.

Provision for hospital-accommodation and medical attendance.

126. If any employer does not, in the opinion of the Inspector, provide such hospital-accommodation in a suitable place available to the labourers employed upon the estate of which he is in charge, or does not make such provision for the medical treatment of such labourers, as the Local Government may direct, the Local Government may require such employer to contribute to the support of a central hospital to be established, or to the pay of a medical officer to be appointed, for the medical treatment of such labourers, such sum,

proportionate

proportionate to the number of labourers so employed, as it thinks fit.

Inquiry whether employer has failed to provide accommodation, &c., as required by the rules.

127. Any Inspector or Assistant Inspector who is himself a Magistrate may, with respect to any estate situate within the local limits of his jurisdiction, institute an inquiry whether the employer in charge of such estate has provided for his labourers house-accommodation, water-supply, sanitary arrangements, food-grains and rations in accordance with the rules prescribed by the Local Government. At the instance of any Inspector or Assistant Inspector a similar inquiry may be made by a Magistrate. Every such inquiry shall be held at some place on the estate to which it relates, or within ten miles of such estate, and shall be conducted and dealt with as if it were an inquiry of a Magistrate under the Code of Criminal Procedure.

G.—Localities unfit for the Residence of Labourers.

Inspector to report.

128. If in the opinion of the Inspector any estate or portion of an estate situate within the local limits of his jurisdiction is at any time, by reason of climate, situation or condition, unfit for the residence of labourers, or of any particular class of labourers, he shall give notice in writing of such opinion to the Magistrate of the district; and such Magistrate shall forthwith, by order in writing, summon a Committee to inquire into the matter. VII

Magistrate to summon Committee.

Such Committee shall consist of the Magistrate, the Inspector, the medical officer of the district and one or more employers of labourers, when such employers are available. VII

If the Magistrate is unable to procure the service on such Committee of any employer of labourers, he may, with the previous sanction of the Commissioner of the division, appoint one or more persons qualified to serve on such Committee. 128A

Proceedings of Committee.

129. Such Committee shall as soon as may be inquire into the healthiness of the estate or portion to which the order appointing the Committee relates, and shall

shall hear and record such information on the subject as the owner of such estate or portion, or the employer in charge thereof or the Inspector, may desire to place before it.

If such Committee or the majority thereof is of opinion that such estate or portion, or any part of such estate or portion, is unfit for the residence of labourers generally, or of any particular class of labourers, it shall record a finding to that effect.

If Committee finds estate unfit, labour-contract to be void as regards such estate.

When such finding has been recorded, no labourer, or no labourer of the particular class to which such finding relates, as the case may be, shall be bound by any labour-contract to labour on the estate or portion, or part of such estate or portion, as the case may be, which is found unfit for the residence of such labourers.

When any labourer is released under this section from the performance of a labour-contract to labour on any estate, he shall be bound to labour on any other estate belonging to his employer and situate in the same labour-district; or, where the finding relates only to a portion or part of an estate, on any other portion or part of the same estate.

Labourer bound to labour elsewhere.

20 (12 & 13) 130. Whenever it appears to the Local Government that the number of labourers employed on an estate who have died thereon, or on any portion thereof, during the last preceding twelve months, or that the average annual number of labourers employed on an estate who have died thereon or on any portion thereof during the last preceding three years, bears a larger proportion to the whole number of labourers employed thereon during such period of twelve months or three years, as the case may be, than seven per centum, the Local Government may direct the civil medical officer of the district or other qualified medical officer to inquire into and report on the following matters:—

Local Government how to proceed if mortality in past year exceeds seven per cent., or if the average mortality for three years exceeds seven per cent.

Matters to be enquired into.

(*a*) the cause or causes of such mortality;

(*b*) the want (if any) of due care or precaution, and of the adoption of proper and available sanitary measures, on the part of the owner of such estate or portion

portion thereof, or the employer in charge of such estate or portion, causing or contributing to such mortality; II

(*c*) the fitness or otherwise of such estate or portion for the residence of labourers.

Medical officer to report.

131. Such medical officer shall, as soon as may be, inquire into such matters, and shall hear and record such information relating thereto as the owner of such estate or portion, or the employer in charge of the same, or the Inspector, may place before him, and shall visit and inspect such estate or portion, and shall make a report expressing the reasons for his opinion, and transmit the same to the Local Government together with the information so recorded and the notes of his inspection of such estate or portion.

Local Government may declare estate unfit for residence.

132. If the Local Government, after perusal and consideration of the said report, information and notes, is of opinion that such mortality was caused by the want, on the part of the owner of such estate or portion, or the employer in charge of the same, of due care or precaution, or of the adoption of proper and available sanitary measures, and that such estate or portion is thereby rendered unfit for the residence of labourers, it may declare in writing that such estate or portion is unfit for the residence of labourers. Such declaration of the Local Government shall have the same effect as the finding of a Committee under section one hundred and twenty-nine.

Effect of declaration.

Power to certify fitness of estate or portion found or declared to be unfit.

133. If it at any time appears to the Inspector that any estate or portion thereof, or any part of such portion, found under section one hundred and twenty-nine, or declared under section one hundred and thirty-two, to be unfit for the residence of labourers, or any particular class of labourers, has become fit for the residence of such labourers or such particular class of labourers, as the case may be, he shall, with the previous sanction of the Magistrate of the district in which such estate, portion or part is situate, give a certificate to that effect signed by him. Thereupon all labourers who have been released under section one hundred and twenty-nine or section one hundred and VII

thirty-two

thirty-two from the performance of a contract to labour on such estate, portion or part, shall again be bound to labour on the estate, portion or part, as the case may be, to which the certificate relates.

H.—Complaints made by Labourers.

If labourer wishes to complain of personal ill-usage or breach of Act, employer to send him to Inspector or Magistrate.

134. If any labourer states to his employer, or any person acting on behalf of his employer, that he desires to make a complaint to the Inspector or to any Magistrate of personal ill-usage or breach, on the part of his employer or such person, of any provisions of this Act or of any rule of the Local Government made hereunder, the person to whom such statement is made shall forthwith send such labourer to the Inspector or Magistrate within the local limits of whose jurisdiction the estate wherein he is employed is situate: Provided that, if more than ten labourers at any one time so state their desire to make such a complaint, the person to whom the statement is made may, instead of sending such labourers to such Inspector or Magistrate, give him notice in writing of their complaint.

Inspector or Magistrate how to proceed if complaint is made to him, or if he has reason to believe that there is ground for a complaint.

135. Whenever any such complaint is made to an Inspector or Magistrate, or whenever any Inspector or Magistrate receives notice in writing of any such complaint, or has other reasonable grounds for believing that any employer or person acting on his behalf has personally ill-used, or committed any breach mentioned in section one hundred and thirty-four in respect of, any labourer, such Inspector or Magistrate shall, as soon as may be, proceed to some place not more than ten miles from the principal place of business of such employer situate within the local limits of his jurisdiction, and inquire into the matter complained of:

Provided that, if the place in which an Inspector or Magistrate has reasonable grounds for believing that such ill-usage or breach has been committed is situate beyond the local limits of his jurisdiction, he shall, instead of inquiring into the matter himself, forthwith send information thereof in writing to the

Inspector

Inspector or Magistrate within the local limits of whose jurisdiction such ill-usage or breach has been committed.

Power to summon witness.

For the purposes of an inquiry under this section, the Inspector or Magistrate may summon and examine any person as a witness.

If complaint is untrue or frivolous.

136. If, upon such inquiry made on the complaint of a labourer, the Inspector or Magistrate is of opinion that the complaint is untrue or frivolous or vexatious, he shall dismiss the complaint; and in such case shall endorse on the employer's copy of the complainant's labour-contract the number of days during which the complainant has been absent from work in consequence of the inquiry, and the number of days so endorsed shall be added to the period for which the complainant contracted to labour.

Every such endorsement shall be conclusive evidence that the complainant has absented himself from his labour voluntarily and without reasonable cause during the number of days so endorsed.

Award of compensation to employer.

137. When any complaint is dismissed under section one hundred and thirty-six, the Inspector or Magistrate may award to the employer any reasonable compensation on account of any expense incurred by him in connection with such complaint, and shall endorse the amount of such compensation on the complainant's copy of the labour-contract. The complainant shall be bound to pay the amount so awarded; and in default of such payment his labour-contract shall not be deemed to have determined until he has worked off such amount at the rate of one day's labour for each four annas of such amount.

If on inquiry there is sufficient ground for proceeding.

138. If, upon such inquiry by a Magistrate or by an Inspector who is a Magistrate, such Magistrate or Inspector is of opinion that there is sufficient ground for proceeding with the case, he shall dispose of the same according to law. If the Inspector is not a Magistrate and is of such opinion, he shall without delay send the complainant and his witnesses (if any) to the nearest Magistrate; and such Magistrate

trate shall thereupon dispose of the case according to law.

139. If, upon the complaint of any labourer, it is proved to the satisfaction of a Magistrate that the wages of such labourer are in arrear for two months, or if the wages of any person whose labour-contract has determined are proved to the satisfaction of a Magistrate to have been withheld for any period after such determination, the Magistrate may award to such labourer or person the amount which appears to be then due to him; and also, by way of compensation, such further sum, not exceeding that amount, as to such Magistrate seems just; and, in case of default in payment of the amount so awarded, the Magistrate shall levy such amount by distress and sale of any moveable property belonging to the employer of such labourer or person.

Recovery of arrears of wages.

Compensation may be given.

140. Whenever it is proved to the satisfaction of a Magistrate—

Power to cancel contract on conviction of employer,

(*a*) that any employer, or any person placed by him in authority over any labourer, has been convicted of any offence causing injury to the person, or loss or damage to the property, of such labourer and under the Code of Criminal Procedure triable exclusively by the Court of Session, or

(*b*) that any employer, or other person as aforesaid, has been twice convicted of any such offence against such labourer and under the said Code triable by a Magistrate, or

(*c*) that the wages of any labourer are in arrear to an amount exceeding the whole of such labourer's wages for four months, or

or if wages are in arrear for more than four months,

(*d*) that any labourer has been compelled by his employer or by any person placed by his employer in authority over him to perform any labour while he was unfit for it, or has been subjected to ill-usage by his employer or any such person,

or if ill-usage is proved.

such Magistrate may, if he thinks fit, on the application of the labourer aggrieved, cancel the labour

labour-contract of such labourer, and award to him compensation not exceeding thirty rupees.

Every such cancelment shall be certified by the Magistrate on the back of the labourer's copy of the labour-contract, or, if the same be not forthcoming, by writing under the Magistrate's hand delivered to the labourer.

I.—Determination of Labour-contract.

Endorsement of determination on labour-contract.

141. Whenever a labour-contract determines, the employer shall endorse on the labourer's copy of the contract the fact of such determination, or, if such copy be not forthcoming, shall give to the labourer a certificate of such determination; and, if the employer refuses or neglects to do so, the Inspector may, on application by the labourer, make such endorsement or give such certificate.

The employer shall give to the Inspector notice in writing of such determination within one month from the date thereof.

Power to redeem labour-contract.

142. If any labourer is able and desirous to redeem the unexpired term of his labour-contract or of the labour-contract of any member of his family, by payment of a sum equivalent to the value of such unexpired term, such labourer may require his employer to take him, or allow him to go, before the Inspector within the local limits of whose jurisdiction he may be employed; and, on his depositing such sum with such Inspector, the Inspector shall give notice to the employer that the labourer requires him, within one week, to show cause why the labourer, the unexpired term of whose contract is proposed to be redeemed, should not be released from his contract. If no sufficient cause is shown, the Inspector shall require such labourer's copy of the contract to be produced, and on production thereof shall endorse thereon a certificate that he has been released under this section from such contract, or, if such copy be not forthcoming, shall deliver to the labourer a certificate under his hand to that effect; and shall in either

either case hold the sum so deposited to the credit of the employer of such labourer.

The value of the unexpired term of a labour-contract shall, for the purposes of this section, be deemed to be the aggregate amount of one rupee for every month of the unexpired portion of the first year, of three rupees for every such month of the second year, and of five rupees for every such month of the third, fourth and fifth years of the original term of the contract. Value of unexpired term of labour-contract.

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CHAPTER VII.

SUPPLEMENTARY POWERS.

143. The Local Government may make rules consistent with this Act— Power of the Local Government to make rules.

(*a*) to define and regulate the powers and duties of the several officers appointed by it under this Act;

(*b*) to prescribe what returns and reports shall be made under this Act by any such officers or by any contractors or local agents within the territories under its administration and the form in which they shall be respectively so made;

(*c*) to prescribe the forms of all registers, licenses, certificates and notices required under this Act with respect to the territories under its administration;

(*d*) to prescribe the particulars to be registered by a Registering officer in respect of each person who is brought before him in any district under its administration for registration as a labourer or dependent;

(*e*) to prescribe the fees to be paid for any license granted under this Act by any officer appointed by it and for the registration of labourers or dependents in any district under its administration;

(*f*) to prescribe the conditions upon which any officer

officer appointed by it may grant licenses to masters of vessels carrying passengers to any labour-district; to provide for the ventilation, cleanliness and water-supply of such vessels in respect of which licenses are granted hereunder by any such officer; and to prescribe the lists, returns and reports to be kept and submitted by the masters of such vessels;

(*g*) to prescribe the description, quantity and quality of provisions, medical drugs and other stores to be taken on board such vessels carrying labourers when such vessels are within the territories under its administration, and the daily allowance to be issued to each labourer and dependent during the journey through such territories; to prescribe the number of officers, cooks and other servants to be carried on board such vessels, and to provide generally for the accommodation of labourers and their dependents on such vessels;

(*h*) to provide for the accommodation, food, clothing and medical treatment of all labourers and dependents detained on account of sickness by order of a Magistrate at any place within any district under its administration;

(*i*) to declare the routes through the territories under its administration by which labourers and their dependents shall not travel to the labour-districts;

(*j*) to prescribe the house-accommodation, water-supply, sanitary arrangements and amount and kind of food-grains to be provided by employers for their labourers, and to regulate the rations to be supplied to labourers under this Act in the labour-districts under its administration;

(*k*) to provide for the hospital-accommodation and medical treatment of labourers in such labour-districts, and to prescribe the nature, quality

quality and quantity of medical drugs and other stores to be provided for such labourers;

(*l*) to provide for the management and regulation of contractors' depôts and of hospital-depôts situate within the territories under its administration, and for the support and medical treatment of labourers and their dependents passing through such depôts;

(*m*) to prescribe the clothing to be supplied to labourers and their dependents while proceeding to the labour-districts through the territories under its administration; and, generally,

(*n*) to give effect to the provisions of this Act within the districts subject to its administration.

Special power of the Lieutenant-Governor of Bengal and Chief Commissioner of Assam.

144. The Lieutenant-Governor of Bengal and the Chief Commissioner of Assam may further respectively make rules consistent with this Act to provide for the detention and inspection of vessels in respect of which licenses are granted hereunder and passengers being natives of India carried thereon while in transit through the territories respectively administered by them.

Power to prescribe penalties.

145. The Local Government may, subject to the control of the Governor General in Council, by rule prescribe as a penalty for the infringement of any rule made by it hereunder, or of any provision of this Act for a breach of which a penalty is not expressly provided, a fine which may extend to five hundred rupees.

Publication of rules.

All rules made under this Act by the Local Government shall be published in the local official Gazette, and shall thereupon have the force of law.

CHAPTER VIII.

PENALTIES AND PROCEDURE.

Inducing native to emigrate in

146. Whoever knowingly induces or assists, or attempts

contravention of a notification under section 5.

attempts to induce or assist, any native of India to emigrate in contravention of a notification published under section five shall be punished with fine which may extend to fifty rupees for every such native whom he so induces or assists, or attempts to induce or assist.

Recruiter removing, &c., unregistered persons.

147. Whoever, being a recruiter,

removes, or attempts to remove, any person to a depôt before he has been registered under section thirty-two, or induces or attempts to induce him to go to a depôt or to leave the local limits of the jurisdiction of the Registering officer before whom such person ought to be brought under section thirty-one, or aids or attempts to aid such person in going to a depôt or in leaving any such local limits, before he has been so registered,

or induces or attempts to induce any person who has been so registered to proceed to any place other than the depôt which has been established by the contractor on whose behalf such recruiter is licensed, or conveys or attempts to convey him to such place,

shall be punished in respect of every such person with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

Recruiter not supplying proper food, &c.

148. Whoever, being a recruiter or a person deputed by him to accompany labourers to a depôt, fails to provide any labourer or any dependent whom he accompanies on the journey to the depôt with proper and sufficient food and lodging, or otherwise ill-treats such labourer or dependent on such journey, shall be punished with fine which may extend to fifty rupees; and, in default of payment of such fine within twenty-four hours, with imprisonment for a term which may extend to one month.

The convicting Magistrate may award the whole or any portion of any fine levied under this section as compensation to the labourer in respect of whom, or of whose dependent, such failure or ill-treatment has occurred.

149. Any

149. Any labourer engaged by a recruiter and who, having been registered under section thirty-two, without reasonable cause refuses or neglects when at the depôt to execute, within thirty days after his arrival at such depôt, a labour-contract in conformity with the terms made known to him when he was registered, shall be punished with fine which may extend to the amount of the expense incurred in registering him and conveying him to the depôt and maintaining him therein; and, in default of payment of such fine, with imprisonment for a term which may extend to one month.

Labourer refusing without reasonable cause to execute contract at depôt.

Any labourer so punished may be forthwith discharged from the depôt.

Every fine levied under this section shall be paid to the contractor, sub-contractor or recruiter by whom such expense was incurred.

150. Any labourer registered under section sixty-six who, without reasonable cause, refuses or neglects to execute, within fifteen days from the day on which he was so registered, a labour-contract in conformity with the terms made known to him when he was registered, shall be punished with fine which may extend to twenty rupees or to the amount of the expense reasonably incurred by the garden-sardár in procuring his registration, whichever amount is least.

Labourer refusing to execute contract with garden-sardár.

Every fine levied under this section shall be paid to the garden-sardár by whom such expense was incurred.

151. Whoever, being a garden-sardár,

Garden-sardár failing to report himself, &c.

fails, within fourteen days after his arrival in the local area within which he is authorized to enter into contracts under this Act, to report himself to the local agent (if any) specified in his certificate, or

removes or attempts to remove any person to a labour-district before he has been registered as provided by section sixty-six, or

induces or attempts to induce any person to go to a labour-district or to leave the local area specified in the

the certificate of such sardár before he has been so registered, or aids or attempts to aid him in proceeding to a labour-district or in leaving any such local area before he has been so registered, or

fails without sufficient cause to return to his employer within the time specified in his certificate, or

fails to account for the money advanced to him by his employer for the purpose of engaging labourers, and

whoever being a garden-sardár or a person appointed under section fifty or section seventy-three to accompany labourers to a labour-district wilfully abandons any labourer or his dependent on the way to such district,

shall be punished with imprisonment for a term which may extend to one month.

Garden-sardár making over labourers to contractors, &c.

152. Any garden-sardár who

makes over to any contractor, sub-contractor or recruiter, or to the garden-sardár or local agent of any employer other than the employer by whom his certificate was granted, any persons engaged as labourers by him, or

allows any persons engaged as labourers by any other contractor or sub-contractor or recruiter to share the accommodation provided by him under section fifty-seven, or

places any person engaged as a labourer by him in a contractor's depôt or in the place of accommodation provided by a recruiter in accordance with the provisions of section twenty-seven,

shall be punished with fine which may extend to ten rupees; and his certificate may be impounded by the convicting Magistrate.

Any Magistrate impounding a certificate under this section shall send it for cancellation to the Magistrate by whom it was countersigned.

Garden-sardár failing to comply with instructions indorsed on way-bill.

153. Any garden-sardár or person appointed by him as provided by section seventy-three, who accompanies labourers to the labour-districts, and fails to present a way-bill as required by section seventy-six or

or to carry out any of the instructions entered in such way-bill, shall be punished with fine which may extend to twenty rupees.

Master receiving native passengers on board in contravention of Act.

154. Any master not licensed under section eighty-nine who, in contravention of section eighty-seven, knowingly receives on board his vessel more than twenty passengers being natives of India, and

any master licensed as aforesaid who knowingly receives on board his vessel any such passengers in excess of the number specified in his license or in any order of an Embarkation Agent under section ninety-one, for the purpose of transporting them to a labour-district,

shall be punished with fine which may extend to two hundred rupees for each passenger so received.

Nothing in this section applies to the master of a vessel exempted under section eighty-seven.

Fraudulent alteration of vessel after grant of license.

155. Any master licensed under section eighty-nine who with intent to defraud does or suffers to be done any act or thing whereby the state of his vessel is altered, so that such vessel is unfit for the accommodation of the number of passengers specified in his license or in any order made under section ninety-one by an Embarkation Agent, shall be punished with fine which may extend to two hundred rupees.

Master not complying with section 94.

156. Any master licensed as aforesaid who proceeds on his voyage with his vessel carrying labourers without having complied with the provisions of section ninety-four shall be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to three months.

Master not complying with order under section 96.

157. Any master licensed as aforesaid who fails to comply with an order of an Embarkation Agent made under section ninety-six shall be punished with fine which may extend to two hundred rupees for each day during which he fails to comply with such order after the day on which the order was received by him.

Master permitting labourer to

158. Any master licensed as aforesaid causing or permitting a labourer finally to leave his vessel contrary

leave vessel contrary to section 98.

trary to the provisions of section ninety-eight shall be punished with fine which may extend to two hundred rupees for each labourer so leaving his vessel.

Master or officer wilfully omitting to stop vessel at certain places.

159. Any master licensed as aforesaid who wilfully omits to comply with the provisions of section ninety-nine shall be punished with fine which may extend to two hundred rupees.

Person disobeying Magistrate's order as to communication between vessel and land.

160. Any person who disobeys any order made under section one hundred and one by a Magistrate shall be punished with fine which may extend to two hundred rupees.

Master or medical officer disobeying or neglecting to enforce rules.

161. Any master licensed as aforesaid, or any medical officer in charge of his vessel, who wilfully omits or neglects to obey or enforce on board of such vessel any provision of this Act or any rule made hereunder, shall be punished with fine which may extend to two hundred rupees.

Labourer deserting, &c., after registration.

162. Any labourer who, having been registered under section thirty-two or section sixty-six, deserts while on his journey from the district in which he has been so registered to a labour-district, or

without reasonable cause refuses or neglects to proceed from the district in which he has been so registered, or to embark in any vessel when called upon to do so by an Embarkation Agent,

shall be punished with imprisonment for a term which may extend to three months.

Employer refusing or omitting to keep registers, &c.

163. Any employer who refuses or wilfully omits to keep such registers, or to make such periodical returns in writing to the Inspector, as may be prescribed by any rule made hereunder, or who knowingly keeps an incorrect register or makes an incorrect return, or who wilfully omits to prepare, file or stick up a schedule as required by section one hundred and fifteen, shall be punished with fine which may extend to two hundred rupees.

Employer or other person obstructing

164. Any employer, or any person acting under his orders or on his behalf, who wilfully obstructs any entry,

entry, inspection or inquiry made under section one hundred and fourteen shall for every such offence be punished with fine which may extend to two hundred rupees.

Inspection under section 114.

31

165. Any employer, or any person acting under his orders or on his behalf, who compels any labourer to perform any labour, knowing that he is at the time unfit to perform such labour, shall be punished with fine which may extend to two hundred rupees.

Employer or other person compelling labourer to perform labour for which he is unfit.

166. Any person who buys the rations which have been furnished under section one hundred and twenty-five to any labourer, and any labourer who sells any such rations, shall be punished with fine which may extend to fifty rupees, or with imprisonment for a term which may extend to one month.

Persons buying labourer's rations.

167. Any employer who wilfully omits to provide house-accommodation, water-supply, sanitary arrangements, food-grains or rations in accordance with the provisions of this Act or any rule made hereunder, shall be punished with fine which may extend to five hundred rupees; and the convicting Magistrate may order him to comply with such provisions within a reasonable time to be fixed in the order.

Employer omitting to provide house-accommodation, &c.

If the employer wilfully omits to comply with such order within the time so fixed, he shall be punished with fine which may extend to one hundred rupees for each day during which such omission continues.

If the employer fails to pay the last-mentioned fine, the person on whose account he has been acting shall be liable to pay such fine.

168. Any employer who fails to provide such hospital-accommodation for, or to make such provision for the medical care and treatment of, labourers, as is required by any rule made under this Act, shall be punished with fine which may extend to two hundred rupees for each week during which such default continues.

Employer neglecting to provide hospital-accommodation.

169. Where any estate or portion thereof has been found under section one hundred and twenty-nine,

Employer causing labourer to

reside on estate declared unfit.

nine, or declared under section one hundred and thirty-two, unfit for the residence of labourers or any class of labourers, as the case may be, every employer who, until a certificate has been given under section one hundred and thirty-three, causes or permits such labourers or class of labourers to reside or labour upon such estate or portion, shall be punished with fine which may extend to two hundred rupees.

Unlawful absence from work.

170. Every employer may, on or before the fifteenth day of each month, send to the Inspector a statement in writing containing the names of all or any of his labourers who, voluntarily and without reasonable cause, absented themselves from labour during the preceding month, and specifying the periods of such absence. When any employer sends any such statement in writing, he shall at the same time notify to each labourer concerned the fact that he has done so.

Any Inspector who receives any such statement shall, when next visiting the estate on which the labourers to whom such statement relates are employed, inquire into each such case of absence, in the presence of the labourer concerned, and, if satisfied that the labourer has voluntarily and without reasonable cause absented himself, shall, unless the labourer consents to forfeit to his employer the sum of four annas for each such day of absence, endorse such days of absence on the labour-contract of such labourer, and add them to the term of such contract.

VII

Labourer absent without cause.

171. Any labourer who, voluntarily and without reasonable cause, absents himself from his labour for more than seven consecutive days, or for more than seven days in any one month, shall be liable to forfeit his wages for the period of such absence, and to pay to his employer a sum not exceeding four annas for each such day of absence, and shall also be liable to imprisonment for a term which may extend to fourteen days; and in case such absence has extended to twenty days in any two consecutive months, to imprisonment for a term which may extend to one month.

Explanation.

Explanation.—Ill-treatment of such labourer by his employer, or failure of the employer to fulfil any condition of the labour-contract binding on the employer, is reasonable cause within the meaning of section one hundred and seventy and this section.

Deserter may be apprehended without warrant.

172. If any labourer deserts from his employer's service, such employer, or any person acting on his behalf, may, without a warrant and without the assistance of any police-officer, arrest such labourer wherever he may be found: Provided that, if such labourer be found within five miles of the place where a Magistrate resides or in the service of another employer, he shall not be arrested without warrant.

Every police-officer shall assist in arresting any such labourer if so required by the employer or person acting on his behalf.

Whoever arrests a labourer under this section shall without delay take him to the police-station nearest to the place of the arrest; and if he fails to do so shall be punished with fine which may extend to two hundred rupees.

Procedure at police-station.

173. The police-officer in charge of such station shall on the appearance of the parties take down in writing the statement of the person arresting the labourer, and shall then forthwith send the labourer to the nearest Magistrate.

Such Magistrate shall either inquire into and dispose of the case himself, or, if the estate of the employer from whose service the labourer deserted is not situate within the local limits of such Magistrate's jurisdiction, he shall forward the labourer to the Magistrate within the local limits of whose jurisdiction such estate is situate.

The Magistrate to whom the labourer is forwarded shall dispose of the case according to law.

Procedure on complaint of desertion.

174. Whenever an employer or a person acting on his behalf complains to a Magistrate that a labourer has deserted from his employer's service, such Magistrate may, without previously examining the complainant, issue a summons for the attendance of such labourer,

labourer, or a warrant for his arrest, and fix a day for hearing the complaint.

VII

Punishment for desertion.

175. Every labourer who deserts from his employer's service shall be punished with imprisonment for a term which may extend to one month. For a second conviction for a like offence he shall be punished with imprisonment for a term which may extend to two months. For a third and every subsequent conviction for a like offence he shall be punished with imprisonment for a term which may extend to three months.

Compensation for wrongful arrest.

176. If it appears to the Magistrate trying a labourer for deserting from his employer's service that such labourer was arrested without sufficient cause, such Magistrate may impose a fine, which may extend to fifty rupees, on the employer or person acting on his behalf by whom, or at whose instance, such labourer was arrested. The Magistrate may in his sentence direct that the whole or any part of such fine be paid by way of compensation to the labourer so arrested.

Cancellation of contract by desertion.

177. Whenever any labourer has actually suffered imprisonment for terms amounting in the whole to six months for desertion from his employer's service, the Inspector shall cancel the labour-contract of such labourer, and shall endorse on his copy of the contract a certificate of such cancellation; or, if such copy be not forthcoming, he shall give to the labourer a written certificate of such cancellation.

Penalty for drunkenness or neglect of sanitary regulations.

178. Any labourer guilty of habitual drunkenness, or wilfully disregarding any sanitary regulation approved by the Inspector and duly notified for the guidance of the labourers on the estate on which such labourer is employed, shall be punished with fine which may extend to five rupees or with imprisonment for a term which may extend to one week.

Portion of sentence may be cancelled on application of employer.

179. The employer of any labourer sentenced to imprisonment for any offence under this Act, or any person authorized to act in this behalf for such employer, may apply to the Magistrate, at any time previous

vious to the expiry of such sentence, that such labourer be made over to him for the purpose of completing his labour-contract. On such application being made, the Magistrate may, if he thinks fit, order that such labourer be made over or forwarded to his employer;

and in that case such Magistrate shall cancel the remainder of the sentence passed on the labourer, and shall endorse on his copy of the labour-contract a certificate of such cancellation, or, if such copy be not forthcoming, shall give him a written certificate of such cancellation.

Nothing in this section shall be deemed to affect the provisions of section one hundred and seventy-seven.

Expense of forwarding labourer to be paid by employer.

180. Every employer who obtains an order of a Magistrate for the making over or forwarding of any labourer shall be liable to defray the expense (if any) incurred in such making over or forwarding; and shall, before the order is issued, deposit with the Magistrate a sum sufficient in the Magistrate's opinion to defray such expense.

Conviction not to operate as a release.

181. On the expiry of any sentence of imprisonment for any offence under this Act, the Magistrate shall, subject to the provisions of section one hundred and seventy-seven, make over such labourer to any person appointed on the part of his employer to take charge of him; and no conviction under this Act, or imprisonment under such conviction, shall, save as aforesaid, operate as a release to any labourer from the terms of his labour-contract:

If no person is present on the part of the employer to take charge of the labourer at the expiry of his sentence, the Magistrate shall forward such labourer to the principal place of business of his employer situate within the local limits of such Magistrate's jurisdiction, and the expense of such forwarding shall be recoverable from such employer as if it were an arrear of land-revenue.

Time of unlawful absence or im-

182. When any labourer is convicted under section one hundred and seventy-one of absence from labour

prisonment to be excluded from contract period.

labour or is sentenced to imprisonment for an offence under this Act, the Magistrate so convicting or sentencing him shall endorse on the employer's copy of the labour-contract the period during which such labourer is convicted of being absent from his labour or the term for which he is sentenced to imprisonment, or both, as the case may be.

The period so endorsed shall be added to the term for which such labourer contracted to serve; and such labourer shall not be deemed to have performed his labour-contract till he has served for the term specified therein in addition to the period so endorsed.

Other person enticing away, harbouring or employing labourer under labour-contract.

37 **183.** Whoever, knowing that any labourer is bound by his labour-contract to labour for any employer, voluntarily entices or attempts to entice such labourer to leave such employer, or harbours or employs any such labourer who has, in contravention of the terms of his labour-contract, left his employer, shall be punished with fine which may extend to two hundred rupees, or with imprisonment for a term which may extend to one month, or with both.

The convicting Magistrate may in his discretion award to the employer with whom such labourer has contracted the whole or any part of any fine levied under this section.

Employer or other person neglecting to send labourer before Magistrate as provided by section 134.

184. Whenever, being bound by section one hundred and thirty-four to send any labourer before, or to give notice of any complaint to, an Inspector or Magistrate, refuses or neglects so to send such labourer, or to give such notice, shall be punished with fine which may extend to two hundred rupees.

Employer refusing to endorse labour-contract, &c., as required by section 141.

185. Any employer who—

refuses or wilfully neglects to endorse the labourer's copy of his contract as required by section one hundred and forty-one, or

detains a labourer after the determination of his labour-contract, or

fails to give to the Inspector notice in writing of such determination within one month of the date thereof,

shall

shall be punished with fine which may extend to two hundred rupees.

186. Any employer or person acting for an employer who refuses or neglects to comply with the request of a labourer made under section one hundred and forty-two shall be punished with fine which may extend to two hundred rupees.

Employer or other person neglecting to comply with request of labourer wishing to redeem unexpired term.

187. Whoever abets within the meaning of the Indian Penal Code any offence against this Act or any rule made hereunder shall be punished with the punishment provided for such offence.

Abetment.

188. Whoever commits any offence against this Act or any rule made hereunder shall be triable for such offence in any place in which he may be found as well as in any other place in which he might be tried under any law for the time being in force.

Place of trial for offences.

189. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence against this Act or the rules made hereunder, or from being liable under any other law to any penalty higher than that provided by this Act for such offence: Provided that no person shall be punished twice for the same offence.

Saving of prosecutions under other laws.

CHAPTER IX.

MISCELLANEOUS.

190. All arrears of wages due under any labour-contract shall be a charge upon the estate upon which the labourer to whom such labour-contract relates has been engaged to labour; or if he has engaged to labour upon any one of several estates managed by the same employer, shall be a charge upon that one of such estates upon which such labourer for the time being actually labours.

Wages due under labour-contract a charge upon estate.

191. Whenever an estate on which any labourer has under this Act contracted to labour is transferred by act of parties or operation of law, or devolves, the person to whom it is so transferred or on whom it devolves

Owner of estate for time being has all rights and remedies in respect of

labour-contracts charged on it.

devolves shall be bound by the labour-contract of such labourer in the same manner and to the same extent as the person by or from whom it is transferred or devolves would have been bound by such contract, and shall have the same rights and remedies under such contract as such person would have had thereunder, if the estate had not been transferred or had not devolved.

Determination of ownership determines liability.

No person who has ceased to be the owner of the estate upon which any labourer has under this Act contracted to labour shall be liable in respect of any breach of the labour-contract of such labourer which occurs after he has ceased to be such owner.

Fines, fees and rates to be credited to "Inland Labour Transport Fund."

192. Subject to the power of a Magistrate under this Act or the Code of Criminal Procedure to award fines in whole or in part as compensation to or for the benefit of any complainant or other person, the Local Government shall credit all fines, fees and rates levied and paid under this Act in the territories under its administration to a fund which shall be called the "Inland Labour Transport Fund;" and such fund shall be at the disposal of such Local Government, in such manner as the Government of India may direct, for paying the salaries and allowances of all officers and establishments appointed under this Act by such Local Government and their pensionary and leave allowances, and generally for defraying the expenses of carrying out the purposes of this Act and the rules of the Local Government made hereunder. The annual surplus accruing in such fund shall be applied to reducing the annual rate or the registration-fees leviable under this Act, and not otherwise.

VII of 1891

Expenditure on roads legalized.

193. All sums heretofore expended on roads or other communications by the Lieutenant-Governor of Bengal out of the Inland Labour Transport Fund constituted by the said Bengal Act No. VII of 1873 shall be deemed to have been expended in accordance with law.

Duty of Assistant Inspector.

194. An Assistant Inspector shall perform all such duties and exercise all such powers of an Inspector as he is

is authorized in writing by the Inspector to perform or exercise.

195. All powers conferred by this Act on the Local Government or on any Superintendent, Medical Inspector, Emigration Agent or other officer may be exercised from time to time as occasion requires.

Powers of Local Government and officers exercisable from time to time.

THE SCHEDULE.

(*See section 9.*)

Form of Labour-contract between Labourer and Employer.

This contract, made under the Inland Emigration Act, 1882, between *A B* (hereinafter called *the labourer*) of the one part, and*[*C D* (*agent* or *local agent* or *garden-sardár*) on behalf of] *E F* (hereinafter called *the employer*) on the other part, witnesseth that the said* [*agent* or *local agent* or *garden-sardár* on behalf of the said] employer doth hereby promise the said labourer, that if he, the said labourer, do remain and labour on the $\frac{\text{X estate}}{\text{Y estates}}$ † of his said employer in the labour-district of for the term of years from the date of the execution of this contract, he, the said employer, will, from the date on which the said labourer commences to labour on such $\frac{\text{estate}}{\text{estates}}$, pay or cause to be paid to the said labourer monthly wages at the rate of Rs. ‡ for a completed daily task regulated in accordance with the provisions of the said Act, and, when such task is not completed, monthly wages calculated at the same rate in proportion to the amount of work actually done, and that during such period he, the said employer, will supply to the said labourer rice at a price of Rs. — per maund, and will faithfully comply with all rules regarding house-accommodation, medical treatment and the supply of food-grains or rations to the said labourer, which the Local Government may from time to time prescribe; and this contract further witnesseth that the said labourer doth hereby, in consideration of the aforesaid promise, agree so to remain and labour for the said employer. In witness whereof the said parties to these presents have hereunto set their hands at this day of 18 .

* Parts in brackets to be omitted if the contract is made without the intervention of an agent, local agent or garden-sardár.

† As the case may be.

‡ State rates for various periods of contract.

Signature of labourer and of employer (or of his agent, local agent or garden-sardár).

Form of Description of Labourer.

NAME.	Father's Name.	Age.	Sex.	Caste.	RESIDENCE.			Descriptive marks.
					District.	Thána.	Village.	

[*Endorsement to be filled up by Registering officer before whom the contract is executed.*]

I hereby certify that, before the said *A B* signed this contract, I personally explained it to him.

Signed_____
Registering officer.

[*Endorsement on labourer's copy of contract, to be left blank until the contract is determined.*]

I hereby certify that the foregoing contract has been determined by effluxion of time (*or* by mutual consent, *or* under the provisions of section of Act , as the case may be).

Dated at

This day of } _____
Signature of Employer or of Inspector.

Government Central Press.—No. 490 L. D.—30-1-82.—2,600.

THE INDIAN TRUSTS ACT, 1882.

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[*Price eight annas.*]

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ACT No. II of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 13th February, 1882.*)

BENGAL SECRETARIAT LIBRARY.

An Act to define and amend the law relating to Private Trusts and Trustees.

WHEREAS it is expedient to define and amend the law relating to private trusts and trustees; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Trusts Act, 1882": and it shall come into force on the first day of March, 1882. Short-title. Commencement.

It extends in the first instance to the territories respectively administered by the Governor of Madras in Council, the Lieutenant-Governors of the North-Western Provinces and the Panjáb, the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam; and the Local Government may from time to time, by notification in the official Gazette, extend it to any other part of British India. But nothing herein contained affects the rules of Muhammadan law as to *waqf*, or the mutual relations of the members of an undivided family as determined by any customary or personal law, or applies to public or private religious or charitable endowments, or to trusts to distribute prizes taken in war among the captors; and nothing in the second chapter of this Act applies to trusts created before the said day. Local extent. Savings.

2. The Statute and Acts mentioned in the Schedule hereto annexed shall, to the extent mentioned in the Repeal of enactments.

the said Schedule be repealed, in the territories to which this Act for the time being extends.

Interpretation-clause.

"trust":

3. A "trust" is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner:

"author of the trust":

"trustee":

"beneficiary":

"trust-property":

"beneficial interest":

"instrument of trust":

the person who reposes or declares the confidence is called the "author of the trust": the person who accepts the confidence is called the "trustee": the person for whose benefit the confidence is accepted is called the "beneficiary": the subject-matter of the trust is called "trust-property" or "trust-money": the "beneficial interest" or "interest" of the beneficiary is his right against the trustee as owner of the trust-property; and the instrument, if any, by which the trust is declared is called the "instrument of trust":

"breach of trust":

a breach of any duty imposed on a trustee, as such, by any law for the time being in force, is called a "breach of trust":

"registered":

"notice."

and in this Act, unless there be something repugnant in the subject or context, "registered" means registered under the law for the registration of documents for the time being in force: a person is said to have "notice" of a fact either when he actually knows that fact or when, but for wilful abstention from inquiry or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent, under the circumstances mentioned in the Indian Contract Act, 1872, section 229; and all expressions used herein and defined in the Indian Contract Act, 1872, shall be deemed to have the meanings respectively attributed to them by that Act.

Expressions defined in Act IX of 1872.

CHAPTER II.

OF THE CREATION OF TRUSTS.

Lawful purpose.

4. A trust may be created for any lawful purpose.

pose. The purpose of a trust is lawful unless it is (*a*) forbidden by law, or (*b*) is of such a nature that, if permitted, it would defeat the provisions of any law, or (*c*) is fraudulent, or (*d*) involves or implies injury to the person or property of another, or (*e*) the Court regards it as immoral or opposed to public policy.

Every trust of which the purpose is unlawful is void. And where a trust is created for two purposes, of which one is lawful and the other unlawful, and the two purposes cannot be separated, the whole trust is void.

Explanation.—In this section, the expression "law" includes, where the trust-property is immoveable and situate in a foreign country, the law of such country.

Illustrations.

(*a*) A conveys property to B in trust to apply the profits to the nurture of female foundlings to be trained up as prostitutes. The trust is void.

(*b*) A bequeaths property to B in trust to employ it in carrying on a smuggling business, and out of the profits thereof to support A's children. The trust is void.

(*c*) A, while in insolvent circumstances, transfers property to B in trust for A during his life, and after his death for B. A is declared an insolvent. The trust for A is invalid as against his creditors.

Trust of immoveable property.

5. No trust in relation to immoveable property is valid unless declared by a non-testamentary instrument in writing signed by the author of the trust or the trustee and registered, or by the will of the author of the trust or of the trustee.

Trust of moveable property.

No trust in relation to moveable property is valid unless declared as aforesaid, or unless the ownership of the property is transferred to the trustee.

These rules do not apply where they would operate so as to effectuate a fraud.

Creation of trust.

6. Subject to the provisions of section five, a trust is created when the author of the trust indicates with reasonable certainty by any words or acts (*a*) an intention on his part to create thereby a trust, (*b*) the purpose

purpose of the trust, (*c*) the beneficiary, and (*d*) the trust-property, and (unless the trust is declared by will or the author of the trust is himself to be the trustee) transfers the trust-property to the trustee.

Illustrations.

(*a*) A bequeaths certain property to B, "having the fullest confidence that he will dispose of it for the benefit of" C. This creates a trust so far as regards A and C.

(*b*) A bequeaths certain property to B, "hoping he will continue it in the family." This does not create a trust, as the beneficiary is not indicated with reasonable certainty.

(*c*) A bequeaths certain property to B, requesting him to distribute it amongst such members of C's family as B should think most deserving. This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

(*d*) A bequeaths certain property to B, desiring him to divide the bulk of it among C's children. This does not create a trust, for the trust-property is not indicated with sufficient certainty.

(*e*) A bequeaths a shop and stock-in-trade to B, on condition that he pays A's debts and a legacy to C. This is a condition, not a trust for A's creditors and C.

Who may create trusts.

7. A trust may be created—

(*a*) by every person competent to contract, and,

(*b*) with the permission of a principal Civil Court of original jurisdiction, by or on behalf of a minor;

but subject in each case to the law for the time being in force as to the circumstances and extent in and to which the author of the trust may dispose of the trust-property.

Subject of trust.

8. The subject-matter of a trust must be property transferable to the beneficiary.

It must not be a merely beneficial interest under a subsisting trust.

Who may be beneficiary.

9. Every person capable of holding property may be a beneficiary.

Disclaimer by beneficiary.

A proposed beneficiary may renounce his interest under the trust by disclaimer addressed to the trustee, or by setting up, with notice of the trust, a claim inconsistent therewith.

10. Every

10. Every person capable of holding property may be a trustee; but where the trust involves the exercise of discretion, he cannot execute it unless he is competent to contract. Who may be trustee.

No one is bound to accept a trust. No one bound to accept trust.

A trust is accepted by any words or acts of the trustee indicating with reasonable certainty such acceptance. Acceptance of trust.

Instead of accepting a trust, the intended trustee may, within a reasonable period, disclaim it, and such disclaimer shall prevent the trust-property from vesting in him. Disclaimer of trust.

A disclaimer by one of two or more co-trustees vests the trust-property in the other or others, and makes him or them sole trustee or trustees from the date of the creation of the trust.

Illustrations.

(*a*) A bequeaths certain property to B and C, his executors, as trustees for D. B and C prove A's will. This is in itself an acceptance of the trust, and B and C hold the property in trust for D.

(*b*) A transfers certain property to B in trust to sell it and to pay out of the proceeds A's debts. B accepts the trust and sells the property. So far as regards B, a trust of the proceeds is created for A's creditors.

(*c*) A bequeaths a lákh of rupees to B upon certain trusts and appoints him his executor. B severs the lákh from the general assets and appropriates it to the specific purpose. This is an acceptance of the trust.

CHAPTER III.

Of the Duties and Liabilities of Trustees.

11. The trustee is bound to fulfil the purpose of the trust, and to obey the directions of the author of the trust given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. Trustee to execute trust.

Where the beneficiary is incompetent to contract, his consent may, for the purposes of this section, be given

given by a principal Civil Court of original jurisdiction.

Nothing in this section shall be deemed to require a trustee to obey any direction when to do so would be impracticable, illegal or manifestly injurious to the beneficiaries.

Explanation.—Unless a contrary intention be expressed, the purpose of a trust for the payment of debts shall be deemed to be (*a*) to pay only the debts of the author of the trust existing and recoverable at the date of the instrument of trust, or, when such instrument is a will, at the date of his death, and (*b*) in the case of debts not bearing interest, to make such payment without interest.

Illustrations.

(*a*) A, a trustee, is simply authorized to sell certain land by public auction. He cannot sell the land by private contract.

(*b*) A, a trustee of certain land for X, Y and Z, is authorized to sell the land to B for a specified sum. X, Y and Z, being competent to contract, consent that A may sell the land to C for a less sum. A may sell the land accordingly.

(*c*) A, a trustee for B and her children, is directed by the author of the trust to lend, on B's request, trust-property to B's husband, C, on the security of his bond. C becomes insolvent, and B requests A to make the loan. A may refuse to make it.

Trustee to inform himself of state of trust-property.

12. A trustee is bound to acquaint himself, as soon as possible, with the nature and circumstances of the trust-property; to obtain, where necessary, a transfer of the trust-property to himself; and (subject to the provisions of the instrument of trust) to get in trust-moneys invested on insufficient or hazardous security.

Illustrations.

(*a*) The trust-property is a debt outstanding on personal security. The instrument of trust gives the trustee no discretionary power to leave the debt so outstanding. The trustee's duty is to recover the debt without unnecessary delay.

(*b*) The trust-property is money in the hands of one of two co-trustees. No discretionary power is given by the instrument of trust. The other co-trustee must not allow the former to retain

retain the money for a longer period than the circumstances of the case required.

Trustee to protect title to trust-property.

13. A trustee is bound to maintain and defend all such suits, and (subject to the provisions of the instrument of trust) to take such other steps as, regard being had to the nature and amount or value of the trust-property, may be reasonably requisite for the preservation of the trust-property and the assertion or protection of the title thereto.

Illustration.

The trust-property is immoveable property which has been given to the author of the trust by an unregistered instrument. Subject to the provisions of the Indian Registration Act, 1877, the trustee's duty is to cause the instrument to be registered.

Trustee not to set up title adverse to beneficiary.

14. The trustee must not for himself or another set-up or aid any title to the trust-property adverse to the interest of the beneficiary.

Care required from trustee.

15. A trustee is bound to deal with the trust-property as carefully as a man of ordinary prudence would deal with such property if it were his own; and, in the absence of a contract to the contrary, a trustee so dealing is not responsible for the loss, destruction or deterioration of the trust-property.

Illustrations.

(*a*) A, living in Calcutta, is a trustee for B, living in Bombay. A remits trust-funds to B by bills drawn by a person of undoubted credit in favour of the trustee as such, and payable at Bombay. The bills are dishonoured. A is not bound to make good the loss.

(*b*) A, a trustee of leasehold property, directs the tenant to pay the rents on account of the trust to a banker, B, then in credit. The rents are accordingly paid to B, and A leaves the money with B only till wanted. Before the money is drawn out, B becomes insolvent. A, having had no reason to believe that B was in insolvent circumstances, is not bound to make good the loss.

(*c*) A, a trustee of two debts for B, releases one and compounds the other, in good faith, and reasonably believing that it is for B's interest to do so. A is not bound to make good any loss caused thereby to B.

(*d*) A, a trustee directed to sell the trust-property by auction,

tion, sells the same, but does not advertise the sale and otherwise fails in reasonable diligence in inviting competition. A is bound to make good the loss caused thereby to the beneficiary.

(*e*) A, a trustee for B, in execution of his trust, sells the trust-property, but from want of due diligence on his part fails to receive part of the purchase-money. A is bound to make good the loss thereby caused to B.

(*f*) A, a trustee for B of a policy of insurance, has funds in hand for payment of the premiums. A neglects to pay the premiums, and the policy is consequently forfeited. A is bound to make good the loss to B.

(*g*) A bequeaths certain monies to B and C as trustees and authorizes them to continue trust-moneys upon the personal security of a certain firm in which A had himself invested them. A dies, and a change takes place in the firm. B and C must not permit the monies to remain upon the personal security of the new firm.

(*h*) A, a trustee for B, allows the trust to be executed solely by his co-trustee, C. C misapplies the trust-property. A is personally answerable for the loss resulting to B.

Conversion of perishable property.

16. Where the trust is created for the benefit of several persons in succession, and the trust-property is of a wasting nature or a future or reversionary interest, the trustee is bound, unless an intention to the contrary may be inferred from the instrument of trust, to convert the property into property of a permanent and immediately profitable character.

Illustrations.

(*a*) A bequeaths to B all his property in trust for C during his life, and on his death for D, and on D's death for E. A's property consists of three leasehold houses, and there is nothing in A's will to show that he intended the houses to be enjoyed in specie. B should sell the houses, and invest the proceeds in accordance with section twenty.

(*b*) A bequeaths to B his three leasehold houses in Calcutta and all the furniture therein in trust for C during his life, and on his death for D, and on D's death for E. Here an intention that the houses and furniture should be enjoyed in specie appears clearly, and B should not sell them.

Trustee to be impartial.

17. Where there are more beneficiaries than one the trustee is bound to be impartial, and must not execute the trust for the advantage of one at the expense of another.

Where

Where the trustee has a discretionary power, nothing in this section shall be deemed to authorize the Court to control the exercise reasonably and in good faith of such discretion.

Illustration.

A, a trustee for B, C and D, is empowered to choose between several specified modes of investing the trust-property. A in good faith chooses one of these modes. The Court will not interfere, although the result of the choice may be to vary the relative rights of B, C and D.

Trustee to prevent waste.

18. Where the trust is created for the benefit of several persons in succession and one of them is in possession of the trust-property, if he commits, or threatens to commit, any act which is destructive or permanently injurious thereto, the trustee is bound to take measures to prevent such act.

Accounts and information.

19. A trustee is bound (*a*) to keep clear and accurate accounts of the trust-property, and (*b*), at all reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust-property.

Investment of trust-money.

20. Where the trust-property consists of money and cannot be applied immediately or at an early date to the purposes of the trust, the trustee is bound (subject to any direction contained in the instrument of trust) to invest the money on the following securities, and on no others :—

(*a*) in promissory notes, debentures, stock or other securities of the Government of India, or of the United Kingdom of Great Britain and Ireland;

(*b*) in bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

(*c*) in stock or debentures of, or shares in, Railway or other Companies the interest whereon shall have been guaranteed by the Secretary of State for India in Council;

(*d*) in debentures or other securities for money issued by, or on behalf of, any municipal body under the authority of any Act of a legislature established in British India;

(*e*) on

(*e*) on a first mortgage of immoveable property situate in British India: Provided that the property is not a leasehold for a term of years and that the value of the property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the mortgage-money; or

(*f*) on any other security expressly authorized by the instrument of trust, or by any rule which the High Court may from time to time prescribe in this behalf.

Provided that, where there is a person competent to contract and entitled in possession to receive the income of the trust-property for his life, or for any greater estate, no investment on any security mentioned or referred to in clauses (*d*), (*e*) and (*f*) shall be made without his consent in writing.

Mortgage of land pledged to Government under Act XXVI of 1871.

Deposit in Government Savings Bank.

21. Nothing in section twenty shall apply to investments made before this Act comes into force, or shall be deemed to preclude an investment on a mortgage of immoveable property already pledged as security for an advance under the Land Improvement Act, 1871, or, in case the trust-money does not exceed three thousand rupees, a deposit thereof in a Government Savings Bank.

Sale by trustee directed to sell within specified time.

22. Where a trustee directed to sell within a specified time extends such time, the burden of proving, as between himself and the beneficiary, that the latter is not prejudiced by the extension lies upon the trustee, unless the extension has been authorized by a principal Civil Court of original jurisdiction.

Illustration.

A bequeaths property to B, directing him with all convenient speed and within five years to sell it, and apply the proceeds for the benefit of C. In the exercise of reasonable discretion, B postpones the sale for six years. The sale is not thereby rendered invalid, but C, alleging that he has been injured by the postponement, institutes a suit against B to obtain compensation. In such suit the burden of proving that C has not been injured lies on B.

Liability for

23. Where the trustee commits a breach of trust, he

he is liable to make good the loss which the trust-property or the beneficiary has thereby sustained, unless the beneficiary has by fraud induced the trustee to commit the breach, or the beneficiary, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, concurred in the breach, or subsequently acquiesced therein, with full knowledge of the facts of the case and of his rights as against the trustee.

breach of trust.

A trustee committing a breach of trust is not liable to pay interest except in the following cases:—

(*a*) where he has actually received interest:

(*b*) where the breach consists in unreasonable delay in paying trust-money to the beneficiary:

(*c*) where the trustee ought to have received interest, but has not done so:

(*d*) where he may be fairly presumed to have received interest.

He is liable, in case (*a*), to account for the interest actually received, and, in cases (*b*), (*c*) and (*d*), to account for simple interest at the rate of six per cent. per annum, unless the Court otherwise directs.

(*e*) Where the breach consists in failure to invest trust-money and to accumulate the interest or dividends thereon, he is liable to account for compound interest (with half-yearly rests) at the same rate.

(*f*) Where the breach consists in the employment of trust-property or the proceeds thereof in trade or business, he is liable to account, at the option of the beneficiary, either for compound interest (with half-yearly rests) at the same rate, or for the nett profits made by such employment.

Illustrations.

(*a*) A trustee improperly leaves trust-property outstanding, and it is consequently lost: he is liable to make good the property lost, but he is not liable to pay interest thereon.

(*b*) A bequeaths a house to B in trust to sell it and pay the proceeds to C. B neglects to sell the house for a great length of time, whereby the house is deteriorated and its market-price falls. B is answerable to C for the loss.

(*c*) A

(*c*) A trustee is guilty of unreasonable delay in investing trust-money in accordance with section twenty, or in paying it to the beneficiary. The trustee is liable to pay interest thereon for the period of the delay.

(*d*) The duty of the trustee is to invest trust-money in any of the securities mentioned in section twenty, clause (*a*), (*b*), (*c*) or (*d*). Instead of so doing, he retains the money in his hands. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, and the intermediate dividends and interest thereon.

(*e*) The instrument of trust directs the trustee to invest trust-money either in any of such securities or on mortgage of immoveable property. The trustee does neither. He is liable for the principal money and interest.

(*f*) The instrument of trust directs the trustee to invest trust-money in any of such securities and to accumulate the dividends thereon. The trustee disregards the direction. He is liable, at the option of the beneficiary, to be charged either with the amount of the principal money and compound interest, or with the amount of such securities as he might have purchased with the trust-money when the investment should have been made, together with the amount of the accumulation which would have arisen from a proper investment of the intermediate dividends.

(*g*) Trust-property is invested in one of the securities mentioned in section twenty, clause (*a*), (*b*), (*c*) or (*d*). The trustee sells such security for some purpose not authorized by the terms of the instrument of trust. He is liable, at the option of the beneficiary, either to replace the security with the intermediate dividends and interest thereon, or to account for the proceeds of the sale with interest thereon.

(*h*) The trust-property consists of land. The trustee sells the land to a purchaser for a consideration without notice of the trust. The trustee is liable, at the option of the beneficiary, to purchase other land of equal value to be settled upon the like trust, or to be charged with the proceeds of the sale with interest.

No set-off allowed to trustee.

24. A trustee who is liable for a loss occasioned by a breach of trust in respect of one portion of the trust-property cannot set-off against his liability a gain which has accrued to another portion of the trust-property through another and distinct breach of trust.

25. Where

25. Where a trustee succeeds another, he is not, as such, liable for the acts or defaults of his predecessor.

Non-liability for predecessor's default.

26. Subject to the provisions of sections thirteen and fifteen, one trustee is not, as such, liable for a breach of trust committed by his co-trustee:

Non-liability for co-trustee's default.

Provided that, in the absence of an express declaration to the contrary in the instrument of trust, a trustee is so liable—

(*a*) where he has delivered trust-property to his co-trustee without seeing to its proper application:

(*b*) where he allows his co-trustee to receive trust-property and fails to make due enquiry as to the co-trustee's dealings therewith, or allows him to retain it longer than the circumstances of the case reasonably require:

(*c*) where he becomes aware of a breach of trust committed or intended by his co-trustee, and either actively conceals it or does not within a reasonable time take proper steps to protect the beneficiary's interest.

A co-trustee who joins in signing a receipt for trust-property and proves that he has not received the same is not answerable, by reason of such signature only, for loss or misapplication of the property by his co-trustee.

Joining in receipt for conformity.

Illustration.

A bequeaths certain property to B and C, and directs them to sell it and invest the proceeds for the benefit of D. B and C accordingly sell the property, and the purchase-money is received by B and retained in his hands. C pays no attention to the matter for two years and then calls on B to make the investment. B is unable to do so, becomes insolvent, and the purchase-money is lost. C may be compelled to make good the amount.

27. Where co-trustees jointly commit a breach of trust, or where one of them by his neglect enables the other to commit a breach of trust, each is liable to the beneficiary for the whole of the loss occasioned by such breach.

Several liability of co-trustees.

But

Contribution as between co-trustees.

But as between the trustees themselves, if one be less guilty than another and has had to refund the loss, the former may compel the latter, or his legal representative to the extent of the assets he has received, to make good such loss ; and if all be equally guilty, any one or more of the trustees who has had to refund the loss may compel the others to contribute.

Nothing in this section shall be deemed to authorize a trustee who has been guilty of fraud to institute a suit to compel contribution.

Non-liability of trustee paying without notice of transfer by beneficiary.

28. When any beneficiary's interest becomes vested in another person, and the trustee, not having notice of the vesting, pays or delivers trust-property to the person who would have been entitled thereto in the absence of such vesting, the trustee is not liable for the property so paid or delivered.

Liability of trustee where beneficiary's interest is forfeited to Government.

29. When the beneficiary's interest is forfeited or awarded by legal adjudication to Government, the trustee is bound to hold the trust-property to the extent of such interest for the benefit of such person in such manner as the Government may direct in this behalf.

Indemnity of trustees.

30. Subject to the provisions of the instrument of trust and of sections twenty-three and twenty-six, trustees shall be respectively chargeable only for such moneys, stocks, funds and securities as they respectively actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker or other person in whose hands any trust-property may be placed, nor for the insufficiency or deficiency of any stocks, funds or securities, nor otherwise for involuntary losses.

CHAPTER IV.

Of the Rights and Powers of Trustees.

Right to title-deed.

31. A trustee is entitled to have in his possession the instrument of trust and all the documents of title (if any) relating solely to the trust-property.

Right to reimbursement of expenses.

32. Every trustee may reimburse himself, or pay or discharge out of the trust-property, all expenses properly

properly incurred in or about the execution of the trust, or the realization, preservation or benefit of the trust-property, or the protection or support of the beneficiary.

If he pays such expenses out of his own pocket he has a first charge upon the trust-property for such expenses and interest thereon; but such charge (unless the expenses have been incurred with the sanction of a principal Civil Court of original jurisdiction) shall be enforced only by prohibiting any disposition of the trust-property without previous payment of such expenses and interest.

If the trust-property fail, the trustee is entitled to recover from the beneficiary personally on whose behalf he acted, and at whose request, expressed or implied, he made the payment, the amount of such expenses.

Right to be recouped for erroneous overpayment.

Where a trustee has by mistake made an over-payment to the beneficiary, he may reimburse the trust-property out of the beneficiary's interest. If such interest fail, the trustee is entitled to recover from the beneficiary personally the amount of such over-payment.

Right to indemnity from gainer by breach of trust.

33. A person other than a trustee who has gained an advantage from a breach of trust must indemnify the trustee to the extent of the amount actually received by such person under the breach; and where he is a beneficiary the trustee has a charge on his interest for such amount.

Nothing in this section shall be deemed to entitle a trustee to be indemnified who has, in committing the breach of trust, been guilty of fraud.

Right to apply to Court for opinion in management of trust-property.

34. Any trustee may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for its opinion, advice or direction on any present questions respecting the management or administration of the trust-property other than questions of detail, difficulty or importance, not proper in the opinion of the Court for summary disposal.

A copy of such petition shall be served upon, and the

the hearing thereof may be attended by, such of the persons interested in the application as the Court thinks fit.

The trustee stating in good faith the facts in such petition and acting upon the opinion, advice or direction given by the Court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee in the subject-matter of the application.

The costs of every application under this section shall be in the discretion of the Court to which it is made.

Right to settlement of accounts.

35. When the duties of a trustee, as such, are completed, he is entitled to have the accounts of his administration of the trust-property examined and settled; and, where nothing is due to the beneficiary under the trust, to an acknowledgment in writing to that effect.

General authority of trustee.

36. In addition to the powers expressly conferred by this Act and by the instrument of trust, and subject to the restrictions, if any, contained in such instrument, and to the provisions of section seventeen, a trustee may do all acts which are reasonable and proper for the realization, protection or benefit of the trust-property, and for the protection or support of a beneficiary who is not competent to contract.

Every trustee in the actual possession or receipt of the rents and profits of land as defined in the Land Improvement Act, 1871, shall, for the purposes of that Act, be deemed to be a landlord in possession.

Except with the permission of a principal Civil Court of original jurisdiction, no trustee shall lease trust-property for a term exceeding twenty-one years from the date of executing the lease, nor without reserving the best yearly rent that can be reasonably obtained.

Power to sell in lots, and either by public auction or private contract.

37. Where the trustee is empowered to sell any trust-property, he may sell the same subject to prior charges or not, and either together or in lots, by public auction or private contract, and either at one time

time or at several times, unless the instrument of trust otherwise directs.

38. The trustee making any such sale may insert such reasonable stipulations either as to title or evidence of title, or otherwise, in any conditions of sale or contract for sale, as he thinks fit; and may also buy-in the property or any part thereof at any sale by auction, and rescind or vary any contract for sale, and re-sell the property so bought in, or as to which the contract is so rescinded, without being responsible to the beneficiary for any loss occasioned thereby.

Power to sell under special conditions.

Power to buy-in and re-sell.

Where a trustee is directed to sell trust-property or to invest trust-money in the purchase of property, he may exercise a reasonable discretion as to the time of effecting the sale or purchase.

Time allowed for selling trust-property.

Illustrations.

(*a*) A bequeaths property to B, directing him to sell it with all convenient speed and pay the proceeds to C. This does not render an immediate sale imperative.

(*b*) A bequeaths property to B, directing him to sell it at such time and in such manner as he shall think fit and invest the proceeds for the benefit of C. This does not authorize B, as between him and C, to postpone the sale to an indefinite period.

39. For the purpose of completing any such sale, the trustee shall have power to convey or otherwise dispose of the property sold in such manner as may be necessary.

Power to convey.

40. A trustee may, at his discretion, call in any trust-property invested in any security and invest the same on any of the securities mentioned or referred to in section twenty, and from time to time vary any such investments for others of the same nature.

Power to vary investments.

Provided that, where there is a person competent to contract and entitled at the time to receive the income of the trust-property for his life, or for any greater estate, no such change of investment shall be made without his consent in writing.

41. Where any property is held by a trustee in trust for a minor, such trustee may, at his discretion, pay to the guardians (if any) of such minor, or otherwise

Power to apply property of minors, &c.,

for their maintenance, &c.

wise apply for or towards his maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the whole or any part of the income to which he may be entitled in respect of such property; and such trustee shall accumulate all the residue of such income by way of compound interest, by investing the same and the resulting income thereof from time to time in any of the securities mentioned or referred to in section twenty, for the benefit of the person who shall ultimately become entitled to the property from which such accumulations have arisen: Provided that such trustee may, at any time, if he thinks fit, apply the whole or any part of such accumulations as if the same were part of the income arising in the then current year.

Where the income of the trust-property is insufficient for the minor's maintenance or education or advancement in life, or the reasonable expenses of his religious worship, marriage or funeral, the trustee may, with the permission of a principal Civil Court of original jurisdiction, but not otherwise, apply the whole or any part of such property for or towards such maintenance, education, advancement or expenses.

Nothing in this section shall be deemed to affect the provisions of any local law for the time being in force relating to the persons and property of minors.

Power to give receipts.

42. Any trustees or trustee may give a receipt in writing for any money, securities or other moveable property payable, transferable or deliverable to them or him by reason, or in the exercise, of any trust or power; and, in the absence of fraud, such receipt shall discharge the person paying, transferring or delivering the same therefrom, and from seeing to the application thereof, or being accountable for any loss or misapplication thereof.

Power to compound, &c.

43. Two or more trustees acting together may, if and as they think fit—

(*a*) accept any composition or any security for any debt or for any property claimed;

(*b*) allow

(*b*) allow any time for payment of any debt;

(*c*) compromise, compound, abandon, submit to arbitration or otherwise settle any debt, account, claim or thing whatever relating to the trust; and,

(*d*) for any of those purposes, enter into, give, execute and do such agreements, instruments of composition or arrangement, releases and other things as to them seem expedient, without being responsible for any loss occasioned by any act or thing so done by them in good faith.

The powers conferred by this section on two or more trustees acting together may be exercised by a sole acting trustee when by the instrument of trust, if any, a sole trustee is authorized to execute the trusts and powers thereof.

This section applies only if and as far as a contrary intention is not expressed in the instrument of trust, if any, and shall have effect subject to the terms of that instrument and to the provisions therein contained.

This section applies only to trusts created after this Act comes into force.

Power to several trustees of whom one disclaims or dies.

44. When an authority to deal with the trust-property is given to several trustees and one of them disclaims or dies, the authority may be exercised by the continuing trustees, unless from the terms of the instrument of trust it is apparent that the authority is to be exercised by a number in excess of the number of the remaining trustees.

Suspension of trustee's powers by decree.

45. Where a decree has been made in a suit for the execution of a trust, the trustee must not exercise any of his powers except in conformity with such decree, or with the sanction of the Court by which the decree has been made, or, where an appeal against the decree is pending, of the Appellate Court.

CHAPTER V.

Of the Disabilities of Trustees.

Trustee can-

46. A trustee who has accepted the trust cannot afterwards

not renounce after acceptance.

afterwards renounce it except (*a*) with the permission of a principal Civil Court of original jurisdiction, or (*b*), if the beneficiary is competent to contract, with his consent, or (*c*) by virtue of a special power in the instrument of trust.

Trustee cannot delegate.

47. A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (*a*) the instrument of trust so provides, or (*b*) the delegation is in the regular course of business, or (*c*) the delegation is necessary, or (*d*) the beneficiary, being competent to contract, consents to the delegation.

Explanation.—The appointment of an attorney or proxy to do an act merely ministerial and involving no independent discretion is not a delegation within the meaning of this section.

Illustrations.

(*a*) A bequeaths certain property to B and C on certain trusts to be executed by them or the survivor of them or the assigns of such survivor. B dies. C may bequeath the trust-property to D and E upon the trusts of A's will.

(*b*) A is a trustee of certain property with power to sell the same. A may employ an auctioneer to effect the sale.

(*c*) A bequeaths to B fifty houses let at monthly rents in trust to collect the rents and pay them to C. B may employ a proper person to collect these rents.

Co-trustees cannot act singly.

48. When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.

Control of discretionary power.

49. Where a discretionary power conferred on a trustee is not exercised reasonably and in good faith, such power may be controlled by a principal Civil Court of original jurisdiction.

Trustee may not charge for services.

50. In the absence of express directions to the contrary contained in the instrument of trust or of a contract to the contrary entered into with the beneficiary or the Court at the time of accepting the trust, a trustee has no right to remuneration for his trouble, skill and loss of time in executing the trust.

Nothing

Nothing in this section applies to any Official Trustee, Administrator General, Public Curator, or person holding a certificate of administration.

51. A trustee may not use or deal with the trust-property for his own profit or for any other purpose unconnected with the trust.

Trustee may not use trust-property for his own profit.

52. No trustee whose duty it is to sell trust-property, and no agent employed by such trustee for the purpose of the sale, may, directly or indirectly, buy the same or any interest therein, on his own account or as agent for a third person.

Trustee for sale or his agent may not buy.

53. No trustee, and no person who has recently ceased to be a trustee, may, without the permission of a principal Civil Court of original jurisdiction, buy or become mortgagee or lessee of the trust-property or any part thereof; and such permission shall not be given unless the proposed purchase, mortgage or lease is manifestly for the advantage of the beneficiary.

Trustee may not buy beneficiary's interest without permission.

And no trustee whose duty it is to buy or to obtain a mortgage or lease of particular property for the beneficiary may buy it, or any part thereof, or obtain a mortgage or lease of it, or any part thereof, for himself.

Trustee for purchase.

54. A trustee or co-trustee whose duty it is to invest trust-money on mortgage or personal security must not invest it on a mortgage by, or on the personal security of, himself or one of his co-trustees.

Co-trustees may not lend to one of themselves.

CHAPTER VI.

Of the Rights and Liabilities of the Beneficiary.

55. The beneficiary has, subject to the provisions of the instrument of trust, a right to the rents and profits of the trust-property.

Rights to rents and profits.

56. The beneficiary is entitled to have the intention of the author of the trust specifically executed to the extent of the beneficiary's interest;

Right to specific execution.

and, where there is only one beneficiary and he is competent

Right to

transfer of possession.

competent to contract, or where there are several beneficiaries and they are competent to contract and all of one mind, he or they may require the trustee to transfer the trust-property to him or them, or to such person as he or they may direct.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in the second clause of this section applies to such property during her marriage.

Illustrations.

(*a*) Certain Government securities are given to trustees upon trust to accumulate the interest until A attains the age of 24, and then to transfer the gross amount to him. A on attaining majority may, as the person exclusively interested in the trust-property, require the trustees to transfer it immediately to him.

(*b*) A bequeaths Rs. 10,000 to trustees upon trust to purchase an annuity for B, who has attained his majority and is otherwise competent to contract. B may claim the Rs. 10,000.

(*c*) A transfers certain property to B and directs him to sell or invest it for the benefit of C, who is competent to contract. C may elect to take the property in its original character.

Right to inspect and take copies of instrument of trust, accounts, &c.

57. The beneficiary has a right, as against the trustee and all persons claiming under him with notice of the trust, to inspect and take copies of the instrument of trust, the documents of title relating solely to the trust-property, the accounts of the trust-property and the vouchers (if any) by which they are supported, and the cases submitted and opinions taken by the trustee for his guidance in the discharge of his duty.

Right to transfer beneficial interest.

58. The beneficiary, if competent to contract, may transfer his interest, but subject to the law for the time being in force as to the circumstances and extent in and to which he may dispose of such interest:

Provided that when property is transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section shall authorize her to transfer such interest during her marriage.

Right to sue.

59. Where no trustees are appointed or all the trustees

trustees die, disclaim or are discharged, or where for any other reason the execution of a trust by the trustee is or becomes impracticable, the beneficiary may institute a suit for the execution of the trust, and the trust shall, so far as may be possible, be executed by the Court until the appointment of a trustee or new trustee.

for execution of trust.

60. The beneficiary has a right (subject to the provisions of the instrument of trust) that the trust-property shall be properly protected and held and administered by proper persons and by a proper number of such persons.

Right to proper trustees.

Explanation I.—The following are not proper persons within the meaning of this section :—

A person domiciled abroad: an alien enemy: a person having an interest inconsistent with that of the beneficiary: a person in insolvent circumstances; and, unless the personal law of the beneficiary allows otherwise, a married woman and a minor.

Explanation II.—When the administration of the trust involves the receipt and custody of money, the number of trustees should be two at least.

Illustrations.

(*a*) A, one of several beneficiaries, proves that B, the trustee, has improperly disposed of part of the trust-property, or that the property is in danger from B's being in insolvent circumstances, or that he is incapacitated from acting as trustee. A may obtain a receiver of the trust-property.

(*b*) A bequeaths certain jewels to B in trust for C. B dies during A's lifetime; then A dies. C is entitled to have the property conveyed to a trustee for him.

(*c*) A conveys certain property to four trustees in trust for B. Three of the trustees die. B may institute a suit to have three new trustees appointed in the place of the deceased trustees.

(*d*) A conveys certain property to three trustees in trust for B. All the trustees disclaim. B may institute a suit to have three trustees appointed in place of the trustees so disclaiming.

(*e*) A, a trustee for B, refuses to act, or goes to reside permanently out of British India, or is declared an insolvent, or compounds with his creditors, or suffers a co-trustee to commit a

breach

breach of trust. B may institute a suit to have A removed and a new trustee appointed in his room.

Right to compel to any act of duty.

61. The beneficiary has a right that his trustee shall be compelled to perform any particular act of his duty as such, and restrained from committing any contemplated or probable breach of trust.

Illustrations.

(*a*) A contracts with B to pay him monthly Rs. 100 for the benefit of C. B writes and signs a letter declaring that he will hold in trust for C the money so to be paid. A fails to pay the money in accordance with his contract. C may compel B on a proper indemnity to allow C to sue on the contract in B's name.

(*b*) A is trustee of certain land, with a power to sell the same and pay the proceeds to B and C equally. A is about to make an improvident sale of the land. B may sue on behalf of himself and C for an injunction to restrain A from making the sale.

Wrongful purchase by trustee.

62. Where a trustee has wrongfully bought trust-property, the beneficiary has a right to have the property declared subject to the trust or retransferred by the trustee, if it remains in his hands unsold, or, if it has been bought from him by any person with notice of the trust, by such person. But in such case the beneficiary must repay the purchase-money paid by the trustee, with interest, and such other expenses (if any) as he has properly incurred in the preservation of the property; and the trustee or purchaser must (*a*) account for the nett profits of the property, (*b*) be charged with an occupation-rent, if he has been in actual possession of the property, and (*c*) allow the beneficiary to deduct a proportionate part of the purchase-money if the property has been deteriorated by the acts or omissions of the trustee or purchaser.

Nothing in this section—

(*a*) impairs the rights of lessees and others who, before the institution of a suit to have the property declared subject to the trust or retransferred, have contracted in good faith with the trustee or purchaser; or

(*b*) entitles the beneficiary to have the property declared subject to the trust or retransferred where he,

he, being competent to contract, has himself, without coercion or undue influence having been brought to bear on him, ratified the sale to the trustee with full knowledge of the facts of the case and of his rights as against the trustee.

Following trust-property—into the hands of third persons;

63. Where trust-property comes into the hands of a third person inconsistently with the trust, the beneficiary may require him to admit formally, or may institute a suit for a declaration, that the property is comprised in the trust.

into that into which it has been converted.

Where the trustee has disposed of trust-property and the money or other property which he has received therefor can be traced in his hands, or the hands of his legal representative or legatee, the beneficiary has, in respect thereof, rights as nearly as may be the same as his rights in respect of the original trust-property.

Illustrations.

(*a*) A, a trustee for B of Rs. 10,000, wrongfully invests the Rs. 10,000 in the purchase of certain land. B is entitled to the land.

(*b*) A, a trustee, wrongfully purchases land in his own name, partly with his own money, partly with money subject to a trust for B. B is entitled to a charge on the land for the amount of the trust-money so misemployed.

Saving of rights of certain transferees.

64. Nothing in section sixty-three entitles the beneficiary to any right in respect of property in the hands of—

(*a*) a transferee in good faith for consideration without having notice of the trust, either when the purchase-money was paid, or when the conveyance was executed, or—

(*b*) a transferee for consideration from such a transferee.

A judgment-creditor of the trustee attaching and purchasing trust-property is not a transferee for consideration within the meaning of this section.

Nothing in section sixty-three applies to money, currency notes and negotiable instruments in the hands of a *bonâ fide* holder to whom they have passed in circulation, or shall be deemed to affect the Indian Contract

Contract Act, 1872, section 108, or the liability of a person to whom a debt or charge is transferred.

Acquisition by trustee of trust-property wrongfully converted.

65. Where a trustee wrongfully sells or otherwise transfers trust-property and afterwards himself becomes the owner of the property, the property again becomes subject to the trust, notwithstanding any want of notice on the part of intervening transferees in good faith for consideration.

Right in case of blended property.

66. Where the trustee wrongfully mingles the trust-property with his own, the beneficiary is entitled to a charge on the whole fund for the amount due to him.

Wrongful employment by partner-trustee of trust-property for partnership purposes.

67. If a partner, being a trustee, wrongfully employs trust-property in the business or on the account of the partnership, no other partner is liable therefor in his personal capacity to the beneficiaries, unless he had notice of the breach of trust.

The partners having such notice are jointly and severally liable for the breach of trust.

Illustrations.

(*a*) A and B are partners. A dies, having bequeathed all his property to B in trust for Z, and appointed B his sole executor. B, instead of winding-up the affairs of the partnership, retains all the assets in the business. Z may compel him, as partner, to account for so much of the profits as are derived from A's share of the capital. B is also answerable to Z for the improper employment of A's assets.

(*b*) A, a trader, bequeaths his property to B in trust for C, appoints B his sole executor, and dies. B enters into partnership with X and Y in the same trade, and employs A's assets in the partnership-business. B gives an indemnity to X and Y against the claims of C. Here X and Y are jointly liable with B to C as having knowingly become parties to the breach of trust committed by B.

Liability of beneficiary joining in breach of trust.

68. Where one of several beneficiaries—

(*a*) joins in committing breach of trust, or

(*b*) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or

(*c*) becomes aware of a breach of trust committed or intended to be committed, and either actually conceals

ceals it, or does not within a reasonable time take proper steps to protect the interests of the other beneficiaries, or

(*d*) has deceived the trustee and thereby induced him to commit a breach of trust,

the other beneficiaries are entitled to have all his beneficial interest impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of the breach) until the loss caused by the breach has been compensated.

When property has been transferred or bequeathed for the benefit of a married woman, so that she shall not have power to deprive herself of her beneficial interest, nothing in this section applies to such property during her marriage.

Rights and liabilities of beneficiary's transferee.

69. Every person to whom a beneficiary transfers his interest has the rights, and is subject to the liabilities, of the beneficiary in respect of such interest at the date of the transfer.

CHAPTER VII.

Of Vacating the Office of Trustee.

Office how vacated.

70. The office of a trustee is vacated by his death or by his discharge from his office.

Discharge of trustee.

71. A trustee may be discharged from his office only as follows:—

(*a*) by the extinction of the trust;

(*b*) by the completion of his duties under the trust;

(*c*) by such means as may be prescribed by the instrument of trust;

(*d*) by appointment under this Act of a new trustee in his place;

(*e*) by consent of himself and the beneficiary, or, where there are more beneficiaries than one, all the beneficiaries being competent to contract, or

(*f*) by the Court to which a petition for his discharge is presented under this Act.

72. Notwithstanding

Petition to be discharged from trust.

72. Notwithstanding the provisions of section eleven, every trustee may apply by petition to a principal Civil Court of original jurisdiction to be discharged from his office; and if the Court finds that there is sufficient reason for such discharge, it may discharge him accordingly, and direct his costs to be paid out of the trust-property. But where there is no such reason, the Court shall not discharge him, unless a proper person can be found to take his place.

Appointment of new trustees on death, &c.

73. Whenever any person appointed a trustee disclaims, or any trustee, either original or substituted, dies, or is for a continuous period of six months absent from British India, or leaves British India for the purpose of residing abroad, or is declared an insolvent, or desires to be discharged from the trust, or refuses or becomes, in the opinion of a principal Civil Court of original jurisdiction, unfit or personally incapable to act in the trust, or accepts an inconsistent trust, a new trustee may be appointed in his place by—

(*a*) the person nominated for that purpose by the instrument of trust (if any), or

(*b*) if there be no such person, or no such person able and willing to act, the author of the trust if he be alive and competent to contract, or the surviving or continuing trustees or trustee for the time being, or legal representative of the last surviving and continuing trustee, or (with the consent of the Court) the retiring trustees, if they all retire simultaneously, or (with the like consent) the last retiring trustee.

Every such appointment shall be by writing under the hand of the person making it.

On an appointment of a new trustee the number of trustees may be increased.

The Official Trustee may, with his consent and by the order of the Court, be appointed under this section, in any case in which only one trustee is to be appointed and such trustee is to be the sole trustee.

The

The provisions of this section relative to a trustee who is dead include the case of a person nominated trustee in a will but dying before the testator, and those relative to a continuing trustee include a refusing or retiring trustee if willing to act in the execution of the power.

Appointment by Court.

74. Whenever any such vacancy or disqualification occurs and it is found impracticable to appoint a new trustee under section seventy-three, the beneficiary may, without instituting a suit, apply by petition to a principal Civil Court of original jurisdiction for the appointment of a trustee or a new trustee, and the Court may appoint a trustee or a new trustee accordingly.

Rule for selecting new trustees.

In appointing new trustees, the Court shall have regard (*a*) to the wishes of the author of the trust as expressed in or to be inferred from the instrument of trust; (*b*) to the wishes of the person, if any, empowered to appoint new trustees; (*c*) to the question whether the appointment will promote or impede the execution of the trust, and (*d*) where there are more beneficiaries than one, to the interests of all such beneficiaries.

Vesting of trust-property in new trustees.

75. Whenever any new trustee is appointed under section seventy-three or section seventy-four, all the trust-property for the time being vested in the surviving or continuing trustees or trustee, or in the legal representative of any trustee, shall become vested in such new trustee, either solely or jointly with the surviving or continuing trustees or trustee as the case may require.

Powers of new trustees.

Every new trustee so appointed, and every trustee appointed by a Court either before or after the passing of this Act, shall have the same powers, authorities and discretions, and shall in all respects act, as if he had been originally nominated a trustee by the author of the trust.

Survival of trust.

76. On the death or discharge of one of several co-trustees, the trust survives and the trust-property passes

passes to the others, unless the instrument of trust expressly declares otherwise.

CHAPTER VIII.

OF THE EXTINCTION OF TRUSTS.

Trust how extinguished.

77. A trust is extinguished—

(*a*) when its purpose is completely fulfilled ; or

(*b*) when its purpose becomes unlawful ; or

(*c*) when the fulfilment of its purpose becomes impossible by destruction of the trust-property or otherwise ; or

(*d*) when the trust, being revocable, is expressly revoked.

Revocation of trust.

78. A trust created by will may be revoked at the pleasure of the testator.

A trust otherwise created can be revoked only—

(*a*) where all the beneficiaries are competent to contract—by their consent ;

(*b*) where the trust has been declared by a non-testamentary instrument or by word of mouth—in exercise of a power of revocation expressly reserved to the author of the trust ; or

(*c*) where the trust is for the payment of the debts of the author of the trust, and has not been communicated to the creditors—at the pleasure of the author of the trust.

Illustration.

A conveys property to B in trust to sell the same and pay out of the proceeds the claims of A's creditors. A reserves no power of revocation. If no communication has been made to the creditors, A may revoke the trust. But if the creditors are parties to the arrangement, the trust cannot be revoked without their consent.

Revocation not to defeat what trustees have duly done.

79. No trust can be revoked by the author of the trust so as to defeat or prejudice what the trustees may have duly done in execution of the trust.

CHAPTER IX.

CHAPTER IX.

OF CERTAIN OBLIGATIONS IN THE NATURE OF TRUSTS.

80. An obligation in the nature of a trust is created in the following cases.

Where obligation in nature of trust is created.

81. Where the owner of property transfers or bequeaths it and it cannot be inferred consistently with the attendant circumstances that he intended to dispose of the beneficial interest therein, the transferee or legatee must hold such property for the benefit of the owner or his legal representative.

Where it does not appear that transferor intended to dispose of beneficial interest.

Illustrations.

(*a*) A conveys land to B without consideration and declares no trust of any part. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the land. B holds the land for the benefit of A.

(*b*) A conveys to B two fields, Y and Z, and declares a trust of Y, but says nothing about Z. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in Z. B holds Z for the benefit of A.

(*c*) A transfers certain stock belonging to him into the joint names of himself and B. It cannot, consistently with the circumstances under which the transfer is made, be inferred that A intended to transfer the beneficial interest in the stock during his life. A and B hold the stock for the benefit of A during his life.

(*d*) A makes a gift of certain land to his wife B. She takes the beneficial interest in the land free from any trust in favour of A, for it may be inferred from the circumstances that the gift was for B's benefit.

82. Where property is transferred to one person for a consideration paid or provided by another person, and it appears that such other person did not intend to pay or provide such consideration for the benefit of the transferee, the transferee must hold the property for the benefit of the person paying or providing the consideration.

Transfer to one for consideration paid by another.

Nothing in this section shall be deemed to affect the Code of Civil Procedure, section 317, or Act No. XI of 1859 (*to improve the law relating to sales of*

of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), section 36.

Trust incapable of execution or executed without exhausting trust-property.

83. Where a trust is incapable of being executed, or where the trust is completely executed without exhausting the trust-property, the trustee, in the absence of a direction to the contrary, must hold the trust-property, or so much thereof as is unexhausted, for the benefit of the author of the trust or his legal representative.

Illustrations.

(*a*) A conveys certain land to B—

"upon trust," and no trust is declared; or

"upon trust to be thereafter declared," and no such declaration is ever made; or

upon trusts that are too vague to be executed; or

upon trusts that become incapable of taking effect; or

"in trust for C," and C renounces his interest under the trust.

In each of these cases B holds the land for the benefit of A.

(*b*) A transfers Rs. 10,000 in the four per cents. to B, in trust to pay the interest annually accruing due to C for her life. A dies. Then C dies. B holds the fund for the benefit of A's legal representative.

(*c*) A conveys land to B upon trust to sell it and apply one moiety of the proceeds for certain charitable purposes, and the other for the maintenance of the worship of an idol. B sells the the land, but the charitable purposes wholly fail, and the maintenance of the worship does not exhaust the second moiety of the proceeds. B holds the first moiety and the part unapplied of the second moiety for the benefit of A or his legal representative.

(*d*) A bequeaths Rs. 10,000 to B, to be laid out in buying land to be conveyed for purposes which either wholly or partially fail to take effect. B holds for the benefit of A's legal representative the undisposed of interest in the money or land if purchased.

Transfer for illegal purpose.

84. Where the owner of property transfers it to another for an illegal purpose and such purpose is not carried into execution, or the transferor is not as guilty as the transferee, or the effect of permitting the transferee to retain the property might be to defeat the provisions of any law, the transferee must hold the property for the benefit of the transferor.

85. Where

85. Where a testator bequeaths certain property upon trust and the purpose of the trust appears on the face of the will to be unlawful, or during the testator's lifetime the legatee agrees with him to apply the property for an unlawful purpose, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest for illegal purpose.

Where property is bequeathed and the revocation of the bequest is prevented by coercion, the legatee must hold the property for the benefit of the testator's legal representative.

Bequest of which revocation is prevented by coercion.

86. Where property is transferred in pursuance of a contract which is liable to rescission or induced by fraud or mistake, the transferee must, on receiving notice to that effect, hold the property for the benefit of the transferor, subject to repayment by the latter of the consideration actually paid.

Transfer pursuant to rescindable contract.

87. Where a debtor becomes the executor or other legal representative of his creditor, he must hold the debt for the benefit of the persons interested therein.

Debtor becoming creditor's representative.

88. Where a trustee, executor, partner, agent, director of a company, legal adviser, or other person bound in a fiduciary character to protect the interests of another person, by availing himself of his character, gains for himself any pecuniary advantage, or where any person so bound enters into any dealings under circumstances in which his own interests are, or may be, adverse to those of such other person and thereby gains for himself a pecuniary advantage, he must hold for the benefit of such other person the advantage so gained.

Advantage gained by fiduciary.

Illustrations.

(*a*) A, an executor, buys at an undervalue from B, a legatee, his claim under the will. B is ignorant of the value of the bequest. A must hold for the benefit of B the difference between the price and value.

(*b*) A, a trustee, uses the trust-property for the purpose of his own business. A holds for the benefit of his beneficiary the profits arising from such user.

(*c*) A, a trustee, retires from his trust in consideration of his successor paying him a sum of money. A holds such money for the benefit of his beneficiary.

(*d*) A,

(*d*) A, a partner, buys land in his own name with funds belonging to the partnership. A holds such land for the benefit of the partnership.

(*e*) A, a partner, employed on behalf of himself and his co-partners in negotiating the terms of a lease, clandestinely stipulates with the lessor for payment to himself of a lákh of rupees. A holds the lákh for the benefit of the partnership.

(*f*) A and B are partners. A dies. B, instead of winding up the affairs of the partnership, retains all the assets in the business. B must account to A's legal representative for the profits arising from A's share of the capital.

(*g*) A, an agent employed to obtain a lease for B, obtains the lease for himself. A holds the lease for the benefit of B.

(*h*) A, a guardian, buys up for himself incumbrances on his ward B's estate at an undervalue. A holds for the benefit of B the incumbrances so bought, and can only charge him with what he has actually paid.

Advantage gained by exercise of undue influence.

89. Where, by the exercise of undue influence, any advantage is gained in derogation of the interests of another, the person gaining such advantage without consideration, or with notice that such influence has been exercised, must hold the advantage for the benefit of the person whose interests have been so prejudiced.

Advantage gained by qualified owner.

90. Where a tenant for life, co-owner, mortgagee or other qualified owner of any property, by availing himself of his position as such, gains an advantage in derogation of the rights of the other persons interested in the property, or where any such owner, as representing all persons interested in such property, gains any advantage, he must hold, for the benefit of all persons so interested, the advantage so gained, but subject to repayment by such persons of their due share of the expenses properly incurred, and to an indemnity by the same persons against liabilities properly contracted, in gaining such advantage.

Illustrations.

(*a*) A, the tenant for life of leasehold property, renews the lease in his own name and for his own benefit. A holds the renewed lease for the benefit of all those interested in the old lease.

(*b*) A village belongs to a Hindú family. A, one of its members

members, pays nazrána to Government and thereby procures his name to be entered as the inámdár of the village. A holds the village for the benefit of himself and the other members.

(*c*) A mortgages land to B, who enters into possession. B allows the Government revenue to fall into arrear with a view to the land being put up for sale and his becoming himself the purchaser of it. The land is accordingly sold to B. Subject to the repayment of the amount due on the mortgage and of his expenses properly incurred as mortgagee, B holds the land for the benefit of A.

Property acquired with notice of existing contract.

91. Where a person acquires property with notice that another person has entered into an existing contract affecting that property, of which specific performance could be enforced, the former must hold the property for the benefit of the latter to the extent necessary to give effect to the contract.

Purchase by person contracting to buy property to be held on trust.

92. Where a person contracts to buy property to be held on trust for certain beneficiaries and buys the property accordingly, he must hold the property for their benefit to the extent necessary to give effect to the contract.

Advantage secretly gained by one of several compounding creditors.

93. Where creditors compound the debts due to them, and one of such creditors, by a secret arrangement with the debtor, gains an undue advantage over his co-creditors, he must hold for the benefit of such creditors the advantage so gained.

Constructive trusts in cases not expressly provided for.

94. In any case not coming within the scope of any of the preceding sections, where there is no trust, but the person having possession of property has not the whole beneficial interest therein, he must hold the property for the benefit of the persons having such interest, or the residue thereof (as the case may be), to the extent necessary to satisfy their just demands.

Illustrations.

(*a*) A, an executor, distributes the assets of his testator B to the legatees without having paid the whole of B's debts. The legatees hold for the benefit of B's creditors, to the extent necessary to satisfy their just demands, the assets so distributed.

(*b*) A

(*b*) A by mistake assumes the character of a trustee for B, and under colour of the trust receives certain money. B may compel him to account for such moneys.

(*c*) A makes a gift of a lákh of rupees to B, reserving to himself, with B's assent, power to revoke at pleasure the gift as to Rs. 10,000. The gift is void as to Rs. 10,000, and B holds that sum for the benefit of A.

Obligor's duties, liabilities and disabilities.

95. The person holding property in accordance with any of the preceding sections of this chapter must, so far as may be, perform the same duties, and is subject, so far as may be, to the same liabilities and disabilities, as if he were a trustee of the property for the person for whose benefit he holds it:

Provided that (*a*) where he rightfully cultivates the property or employs it in trade or business, he is entitled to reasonable remuneration for his trouble, skill and loss of time in such cultivation or employment; and (*b*) where he holds the property by virtue of a contract with the person for whose benefit he holds it, or with any one through whom such person claims, he may, without the permission of the Court, buy or become lessee or mortgagee of the property or any part thereof.

Saving of rights of *bonâ fide* purchasers.

96. Nothing contained in this chapter shall impair the rights of transferees in good faith for consideration, or create an obligation in evasion of any law for the time being in force.

THE SCHEDULE.

STATUTE.

Year and chapter.	Short title.	Extent of repeal.
29 Car. II, c. 3 ...	The Statute of Frauds.	Sections 7, 8, 9, 10, and 11.

ACTS

Acts of the Governor General in Council.

Number and year.	Short title.	Extent of repeal.
XXVIII of 1866	The Trustees' and Mortgagees' Powers Act, 1866.	Sections 2, 3, 4, 5, 32, 33, 34, 35, 36 and 37. In sections 39 and 43 the word "trustee" wherever it occurs; and in section 43 the words "management or" and "the trust-property or."
I of 1877 ...	The Specific Relief Act, 1877.	In section 12 the first illustration.

Government Central Press.—No. 513 L. D.—6-2-82.—3,600.

ACT No. III of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th January, 1882.)

An Act to amend the law relating to Seditious Publications.

WHEREAS it is expedient to amend the law relating to Seditious Publications; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Seditious Publications Act, 1882." Short title.

It extends to the whole of British India; and shall come into force at once. Local extent. Commencement.

2. Act No. IX of 1878 *(An Act for the better control of Publications in Oriental languages)* and Act No. XVI of 1878 *(An Act to amend Act No. IX of 1878)* are repealed. Repeal of Acts.

3. After section 60 of Act No. XIV of 1866 *(The Indian Post Office Act, 1866)* the following section shall be inserted, namely:— Section inserted after section 60, Act No. XIV of 1866.

"60A. Whenever any notification has been published under section nineteen of the Sea Customs Act, 1878, in respect of any newspaper, book, pamphlet, placard, broadsheet or other document, any officer of the Postal Department empowered in this behalf by the Governor General in Council, by name or in virtue of his office, may search or cause search to be made for any copies of the same in the custody of that Department, and shall deliver all such copies found to such officer as the Governor General in Council may appoint in this behalf by name or in virtue of his office, and such copies may be disposed of in such manner as the Governor General in Council may from time to time direct."

[*Price one anna.*]

Government Central Press.—No. 566 L. D.—1-2-82.—3,600.

THE TRANSFER OF PROPERTY ACT, 1882.

LIBRARY.

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[*Price twelve annas.*]

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ACT No. IV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th February, 1882.)

An Act to amend the law relating to the Transfer of Property by act of Parties.

WHEREAS it is expedient to define and amend certain parts of the law relating to the transfer of property by act of parties; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Transfer of Property Act, 1882": Short title.

It shall come into force on the first day of July, 1882; Commencement.

It extends in the first instance to the whole of British India except the territories respectively administered by the Governor of Bombay in Council, the Lieutenant-Governor of the Panjáb and the Chief Commissioner of British Burma. Extent.

But any of the said Local Governments may, from time to time, by notification in the local official Gazette, extend this Act to the whole or any specified part of the territories under its administration.

And any Local Government may, with the previous sanction of the Governor General in Council, from time to time, by notification in the local official Gazette, exempt, either retrospectively or prospectively, throughout the whole or any part of the territories administered by such Local Government, the members of any race, sect, tribe or class from all or any of the following

following provisions, namely, sections forty-one, fifty-four, paragraphs two and three, fifty-nine, sixty-nine, one hundred and seven and one hundred and twenty-three.

Repeal of Acts.

2. In the territories to which this Act extends for the time being the enactments specified in the schedule hereto annexed shall be repealed to the extent therein mentioned. But nothing herein contained shall be deemed to affect—

Saving of certain enactments, incidents, rights, liabilities, &c.

(*a*) the provisions of any enactment not hereby expressly repealed:

(*b*) any terms or incidents of any contract or constitution of property which are consistent with the provisions of this Act, and are allowed by the law for the time being in force:

(*c*) any right or liability arising out of a legal relation constituted before this Act comes into force, or any relief in respect of any such right or liability: or

(*d*) save as provided by section fifty-seven and chapter four of this Act, any transfer by operation of law or by, or in execution of, a decree or order of a Court of competent jurisdiction: and nothing in the second chapter of this Act shall be deemed to affect any rule of Hindú, Muhammadan or Buddhist law.

Interpretation-clause.

3. In this Act, unless there is something repugnant in the subject or context,—

"immoveable property":

"immoveable property" does not include standing timber, growing crops or grass:

"instrument":

"instrument" means a non-testamentary instrument:

"registered":

"registered" means registered in British India under the law for the time being in force regulating the registration of documents:

"attached to the earth":

"attached to the earth" means—

(*a*) rooted in the earth, as in the case of trees and shrubs;

(*b*) imbedded in the earth, as in the case of walls or buildings; or

(*c*) attached

(*c*) attached to what is so imbedded for the permanent beneficial enjoyment of that to which it is attached:

and a person is said to have "notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it, or when information of the fact is given to or obtained by his agent under the circumstances mentioned in the Indian Contract Act, 1872, section 229. "notice":

4. The chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872. Enactments relating to contracts to be taken as part of Act IX of 1872.

CHAPTER II.

Of Transfers of Property by act of Parties.

(A.)—Transfer of Property, whether moveable or immoveable.

5. In the following sections "transfer of property" means an act by which a living person conveys property, in present or in future, to one or more other living persons, or to himself and one or more other living persons, and "to transfer property" is to perform such act. "Transfer of property" defined.

6. Property of any kind may be transferred, except as otherwise provided by this Act or by any other law for the time being in force: What may be transferred.

(*a*) The chance of an heir-apparent succeeding to an estate, the chance of a relation obtaining a legacy on the death of a kinsman, or any other mere possibility of a like nature, cannot be transferred. Amended

(*b*) A mere right of re-entry for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby.

(*c*) An easement cannot be transferred apart from the dominant heritage.

(*d*) An

(*d*) An interest in property restricted in its enjoyment to the owner personally cannot be transferred by him.

(*e*) A mere right to sue for compensation for a fraud or for harm illegally caused cannot be transferred.

(*f*) A public office cannot be tansferred, nor can the salary of a public officer, whether before or after it has become payable.

(*g*) Stipends allowed to military and civil pensioners of Government and political pensions cannot be transferred.

(*h*) No transfer can be made (1) in so far as it is opposed to the nature of the interest affected thereby, or (2) for an illegal purpose, or (3) to a person legally disqualified to be transferee.

Persons competent to transfer.

7. Every person competent to contract and entitled to transferable property, or authorized to dispose of transferable property not his own, is competent to transfer such property either wholly or in part and either absolutely or conditionally, in the circumstances, to the extent and in the manner, allowed and prescribed by any law for the time being in force.

Operation of transfer.

8. Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect.

Oral transfer

9. A transfer of property may be made without writing in every case in which a writing is not expressly required by law.

Condition restraining alienation.

10. Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him: provided that property may be transferred to or for the benefit of a woman (not being a Hindú, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or charge the same or her beneficial interest therein.

Restriction repugnant to interest created.

11. Where, on a transfer of property, an interest therein is created absolutely in favour of any person, but the terms of the transfer direct that such interest shall be applied or enjoyed by him in a particular manner, he shall be entitled to receive and dispose of such interest as if there were no such direction.

Nothing in this section shall be deemed to affect the right to restrain, for the beneficial enjoyment of one piece of immoveable property, the enjoyment of another piece of such property, or to compel the enjoyment thereof in a particular manner.

Condition making interest determinable on insolvency or attempted alienation.

12. Where property is transferred subject to a condition or limitation making any interest therein, reserved or given to or for the benefit of any person, to cease on his becoming insolvent or endeavouring to transfer or dispose of the same, such condition or limitation is void.

Nothing

Nothing in this section applies to a condition in a lease for the benefit of the lessor or those claiming under him.

Transfer for benefit of unborn person.

13. Where, on a transfer of property, an interest therein is created for the benefit of a person not in existence at the date of the transfer, subject to a prior interest created by the same transfer, the interest created for the benefit of such person shall not take effect, unless it extends to the whole of the remaining interest of the transferor in the property.

Illustration.

A tranfers property of which he is the owner to B in trust for A and his intended wife successively for their lives, and after the death of the survivor for the eldest son of the intended marriage for life, and after his death for A's second son. The interest so created for the benefit of the eldest son does not take effect, because it does not extend to the whole of A's remaining interest in the property.

Rule against perpetuity.

14. No transfer of property can operate to create an interest which is to take effect after the life-time of one or more persons living at the date of such transfer, and the minority of some person who shall be in existence at the expiration of that period, and to whom, if he attains full age, the interest created is to belong.

Transfer to class some of whom come under sections 13 and 14.

15. If, on a transfer of property, an interest therein is created for the benefit of a class of persons with regard to some of whom such interest fails by reason of any of the rules contained in sections thirteen and fourteen, such interest fails as regards the whole class.

Transfer to take effect on failure of prior transfer.

16. Where an interest fails by reason of any of the rules contained in sections thirteen, fourteen and fifteen, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer in perpetuity for benefit of public.

17. The restrictions in sections fourteen, fifteen and sixteen shall not apply to property transferred for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety or any other object beneficial to mankind.

18. Where

18. Where the terms of a transfer of property direct that the income arising from the property shall be accumulated, such direction shall be void, and the property shall be disposed of as if no accumulation had been directed. Direction for accumulation.

Exception.—Where the property is immoveable, or where accumulation is directed to be made from the date of the transfer, the direction shall be valid in respect only of the income arising from the property within one year next following such date; and at the end of the year such property and income shall be disposed of respectively as if the period during which the accumulation has been directed to be made had elapsed.

19. Where, on a transfer of property, an interest therein is created in favour of a person without specifying the time when it is to take effect, or in terms specifying that it is to take effect forthwith or on the happening of an event which must happen, such interest is vested, unless a contrary intention appears from the terms of the transfer. Vested interest.

A vested interest is not defeated by the death of the transferee before he obtains possession.

Explanation.—An intention that an interest shall not be vested is not to be inferred merely from a provision whereby the enjoyment thereof is postponed, or whereby a prior interest in the same property is given or reserved to some other person, or whereby income arising from the property is directed to be accumulated until the time of enjoyment arrives, or from a provision that if a particular event shall happen the interest shall pass to another person.

20. Where, on a transfer of property, an interest therein is created for the benefit of a person not then living, he acquires upon his birth, unless a contrary intention appear from the terms of the transfer, a vested interest, although he may not be entitled to the enjoyment thereof immediately on his birth. When unborn person acquires vested interest on transfer for his benefit.

21. Where, on a transfer of property, an interest therein is created in favour of a person to take effect Contingent interest.

only

only on the happening of a specified uncertain event, or if a specified uncertain event shall not happen, such person thereby acquires a contingent interest in the property. Such interest becomes a vested interest, in the former case, on the happening of the event, in the latter, when the happening of the event becomes impossible.

Exception.—Where, under a transfer of property, a person becomes entitled to an interest therein upon attaining a particular age, and the transferor also gives to him absolutely the income to arise from such interest before he reaches that age, or directs the income or so much thereof as may be necessary to be applied for his benefit, such interest is not contingent.

Transfer to members of a class who attain a particular age.

22. Where, on a transfer of property, an interest therein is created in favour of such members only of a class as shall attain a particular age, such interest does not vest in any member of the class who has not attained that age.

Transfer contingent on happening of specified uncertain event.

23. Where, on a transfer of property, an interest therein is to accrue to a specified person if a specified uncertain event shall happen, and no time is mentioned for the occurrence of that event, the interest fails unless such event happens before, or at the same time as, the intermediate or precedent interest ceases to exist.

Transfer to such of certain persons as survive at some period not specified.

24. Where, on a transfer of property, an interest therein is to accrue to such of certain persons as shall be surviving at some period, but the exact period is not specified, the interest shall go to such of them as shall be alive when the intermediate or precedent interest ceases to exist, unless a contrary intention appears from the terms of the transfer.

Illustration.

A transfers property to B for life, and after his death to C and D, equally to be divided between them, or to the survivor of them. C dies during the life of B. D survives B. At B's death the property passes to D.

Conditional transfer.

25. An interest created on a transfer of property and dependent upon a condition fails if the fulfilment of

of the condition is impossible, or is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy.

Illustrations.

(*a.*) A lets a farm to B on condition that he shall walk a hundred miles in an hour. The lease is void.

(*b.*) A gives Rs. 500 to B on condition that he shall marry A's daughter C. At the date of the transfer C was dead. The transfer is void.

(*c.*) A transfers Rs. 500 to B on condition that she shall murder C. The transfer is void.

(*d.*) A transfers Rs. 500 to his niece C if she will desert her husband. The transfer is void.

Fulfilment of condition precedent.

26. Where the terms of a transfer of property impose a condition to be fulfilled before a person can take an interest in the property, the condition shall be deemed to have been fulfilled if it has been substantially complied with.

Illustrations.

(*a.*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. E dies. B marries with the consent of C and D. B is deemed to have fulfilled the condition.

(*b.*) A transfers Rs. 5,000 to B on condition that he shall marry with the consent of C, D and E. B marries without the consent of C, D and E, but obtains their consent after the marriage. B has not fulfilled the condition.

Conditional transfer to one person coupled with transfer to another on failure of prior disposition.

27. Where, on a transfer of property, an interest therein is created in favour of one person, and by the same transaction an ulterior disposition of the same interest is made in favour of another, if the prior disposition under the transfer shall fail, the ulterior disposition shall take effect upon the failure of the prior disposition, although the failure may not have occurred in the manner contemplated by the transferor.

But where the intention of the parties to the transaction is that the ulterior disposition shall take effect only in the event of the prior disposition failing in a particular manner, the ulterior disposition shall not take

take effect unless the prior disposition fails in that manner.

Illustrations.

(*a.*) A transfers Rs. 500 to B on condition that he shall execute a certain lease within three months after A's death, and if he should neglect to do so, to C. B dies in A's life-time. The disposition in favour of C takes effect.

(*b.*) A transfers property to his wife; but in case she should die in his life-time, transfers to B that which he had transferred to her. A and his wife perish together, under circumstances which make it impossible to prove that she died before him. The disposition in favour of B does not take effect.

Ulterior transfer conditional on happening or not happening of specified vent.

28. On a transfer of property an interest therein may be created to accrue to any person with the condition superadded that in case a specified uncertain event shall happen such interest shall pass to another person, or that in case a specified uncertain event shall not happen such interest shall pass to another person. In each case the dispositions are subject to the rules contained in sections ten, twelve, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five and twenty-seven.

Fulfilment of condition subsequent.

29. An ulterior disposition of the kind contemplated by the last preceding section cannot take effect unless the condition is strictly fulfilled.

Illustration.

A transfers Rs. 500 to B, to be paid to him on his attaining his majority or marrying, with a proviso that, if B dies a minor or marries without C's consent, the Rs. 500 shall go to D. B marries when only 17 years of age, without C's consent. The transfer to D takes effect.

Prior disposition not affected by invalidity of ulterior disposition.

30. If the ulterior disposition is not valid, the prior disposition is not affected by it.

Illustration.

A transfers a farm to B for her life, and, if she do not desert her husband, to C. B is entitled to the farm during her life as if no condition had been inserted.

Condition that transfer shall cease to have effect in case specified uncertain

31. Subject to the provisions of section twelve, on a transfer of property an interest therein may be created with the condition superadded that it shall cease to exist in case a specified uncertain event shall happen,

happen, or in case a specified uncertain event shall not happen.

event happens or does not happen.

Illustrations.

(*a*). A transfers a farm to B for his life, with a proviso that, in case B cuts down a certain wood, the transfer shall cease to have any effect. B cuts down the wood. He loses his life-interest in the farm.

(*b*). A transfers a farm to B, provided that, if B shall not go to England within three years after the date of the transfer, his interest in the farm shall cease. B does not go to England within the term prescribed. His interest in the farm ceases.

32. In order that a condition that an interest shall cease to exist may be valid, it is necessary that the event to which it relates be one which could legally constitute the condition of the creation of an interest.

Such condition must not be invalid.

33. Where, on a transfer of property, an interest therein is created subject to a condition that the person taking it shall perform a certain act, but no time is specified for the performance of the act, the condition is broken when he renders impossible, permanently or for an indefinite period, the performance of the act.

Transfer conditional on performance of act, no time being specified for performance.

34. Where an act is to be performed by a person either as a condition to be fulfilled before an interest created on a transfer of property is enjoyed by him, or as a condition on the non-fulfilment of which the interest is to pass from him to another person, and a time is specified for the performance of the act, if such performance within the specified time is prevented by the fraud of a person who would be directly benefited by non-fulfilment of the condition, such further time shall as against him be allowed for performing the act as shall be requisite to make up for the delay caused by such fraud. But if no time is specified for the performance of the act, then, if its performance is by the fraud of a person interested in the non-fulfilment of the condition rendered impossible or indefinitely postponed, the condition shall as against him be deemed to have been fulfilled.

Transfer conditional on performance of act, time being specified.

Election.

Election.

Election when necessary.

35. Where a person professes to transfer property which he has no right to transfer, and as part of the same transaction confers any benefit on the owner of the property, such owner must elect either to confirm such transfer or to dissent from it; and in the latter case he shall relinquish the benefit so conferred, and the benefit so relinquished shall revert to the transferor or his representative as if it had not been disposed of,

subject nevertheless,

where the transfer is gratuitous, and the transferor has, before the election, died or otherwise become incapable of making a fresh transfer,

and in all cases where the transfer is for consideration,

to the charge of making good to the disappointed transferee the amount or value of the property attempted to be transferred to him.

Illustrations.

The farm of Sultánpur is the property of C and worth Rs. 800. A by an instrument of gift professes to transfer it to B, giving by the same instrument Rs. 1,000 to C. C elects to retain the farm. He forfeits the gift of Rs. 1,000.

In the same case, A dies before the election. His representative must out of the Rs. 1,000 pay Rs. 800 to B.

The rule in the first paragraph of this section applies whether the transferor does or does not believe that which he professes to transfer to be his own.

A person taking no benefit directly under a transaction, but deriving a benefit under it indirectly, need not elect.

A person who in his one capacity takes a benefit under the transaction may in another dissent therefrom.

Exception to the last preceding four rules.—Where a particular benefit is expressed to be conferred on the owner of the property which the transferor professes to transfer, and such benefit is expressed to be

be in lieu of that property, if such owner claim the property, he must relinquish the particular benefit, but he is not bound to relinquish any other benefit conferred upon him by the same transaction.

Acceptance of the benefit by the person on whom it is conferred constitutes an election by him to confirm the transfer, if he is aware of his duty to elect and of those circumstances which would influence the judgment of a reasonable man in making an election, or if he waives enquiry into the circumstances.

Such knowledge or waiver shall, in the absence of evidence to the contrary, be presumed, if the person on whom the benefit has been conferred has enjoyed it for two years without doing any act to express dissent.

Such knowledge or waiver may be inferred from any act of his which renders it impossible to place the persons interested in the property professed to be transferred in the same condition as if such act had not been done.

Illustration.

A transfers to B an estate to which C is entitled, and as part of the same transaction gives C a coal-mine. C takes possession of the mine and exhausts it. He has thereby confirmed the transfer of the estate to B.

If he does not within one year after the date of the transfer signify to the transferor or his representatives his intention to confirm or to dissent from the transfer, the transferor or his representatives may, upon the expiration of that period, require him to make his election; and if he does not comply with such requisition within a reasonable time after he has received it, he shall be deemed to have elected to confirm the transfer.

In case of disability, the election shall be postponed until the disability ceases, or until the election is made by some competent authority.

Apportionment.

Apportionment of periodical payments.

36. In the absence of a contract or local usage to the contrary, all rents, annuities, pensions, dividends and

ments on determination of interest of person entitled.

and other periodical payments in the nature of income shall, upon the transfer of the interest of the person entitled to receive such payments, be deemed, as between the transferor and the transferee, to accrue due from day to day, and to be apportionable accordingly, but to be payable on the days appointed for the payment thereof.

Apportionment of benefit of obligation on severance.

37. When, in consequence of a transfer, property is divided and held in several shares, and thereupon the benefit of any obligation relating to the property as a whole passes from one to several owners of the property, the corresponding duty shall, in the absence of a contract to the contrary amongst the owners, be performed in favour of each of such owners in proportion to the value of his share in the property, provided that the duty can be severed and that the severance does not substantially increase the burden of the obligation; but if the duty cannot be severed, or if the severance would substantially increase the burden of the obligation, the duty shall be performed for the benefit of such one of the several owners as they shall jointly designate for that purpose:

Provided that no person on whom the burden of the obligation lies shall be answerable for failure to discharge it in manner provided by this section, unless and until he has had reasonable notice of the severance.

Nothing in this section applies to leases for agricultural purposes unless and until the Local Government by notification in the official Gazette so directs.

Illustrations.

(*a.*) A sells to B, C and D a house situate in a village and leased to E at an annual rent of Rs. 30 and delivery of one fat sheep, B having provided half the purchase-money and C and D one quarter each. E, having notice of this, must pay Rs. 15 to B, Rs. 7½ to C, and Rs. 7½ to D, and must deliver the sheep according to the joint direction of B, C and D.

(*b.*) In the same case, each house in the village being bound to provide ten days' labour each year on a dyke to prevent inundation, E had agreed as a term of his lease to perform this work for A. B, C and D severally require E to perform the ten days' work due on account of the house of each. E is not bound

bound to do more than ten days' work in all, according to such directions as B, C and D may join in giving.

B.—Transfer of Immoveable Property.

Transfer by person authorized only under certain circumstances to transfer.

38. Where any person, authorized only under circumstances in their nature variable to dispose of immoveable property, transfers such property for consideration, alleging the existence of such circumstances, they shall, as between the transferee on the one part and the transferor and other persons (if any) affected by the transfer on the other part, be deemed to have existed, if the transferee, after using reasonable care to ascertain the existence of such circumstances, has acted in good faith.

Illustration.

A, a Hindú widow, whose husband has left collateral heirs, alleging that the property held by her as such is insufficient for her maintenance, agrees, for purposes neither religious nor charitable, to sell a field, part of such property, to B. B satisfies himself by reasonable enquiry that the income of the property is insufficient for A's maintenance, and that the sale of the field is necessary, and, acting in good faith, buys the field from A. As between B on the one part and A and the collateral heirs on the other part, a necessity for the sale shall be deemed to have existed.

Transfer where third person is entitled to maintenance.

39. Where a third person has a right to receive maintenance, or a provision for advancement or marriage, from the profits of immoveable property, and such property is transferred with the intention of defeating such right, the right may be enforced against the transferee, if he has notice of such intention or if the transfer is gratuitous; but not against a transferee for consideration and without notice of the right, nor against such property in his hands.

Illustration.

A, a Hindú, transfers Sultánpur to his sister-in-law B, in lieu of her claim against him for maintenance in virtue of his having become entitled to her deceased husband's property, and agrees with her that, if she is dispossessed of Sultánpur, A will transfer to her an equal area out of such of several other specified villages in his possession as she may elect. A sells the specified villages to C, who buys in good faith, without notice of the

the agreement. B is dispossessed of Sultánpur. She has no claim on the villages transferred to C.

Burden of obligation imposing restriction on use of land,

40. Where, for the more beneficial enjoyment of his own immoveable property, a third person has, independently of any interest in the immoveable property of another or of any easement thereon, a right to restrain the enjoyment of the latter property or to compel its enjoyment in a particular manner, or

or of obligation annexed to ownership but not amounting to interest or easement.

where a third person is entitled to the benefit of an obligation arising out of contract and annexed to the ownership of immoveable property, but not amounting to an interest therein or easement thereon,

such right or obligation may be enforced against a transferee with notice thereof or a gratuitous transferee of the property affected thereby, but not against a transferee for consideration and without notice of the right or obligation, nor against such property in his hands.

Illustration.

A contracts to sell Sultánpur to B. While the contract is still in force he sells Sultánpur to C, who has notice of the contract. B may enforce the contract against C to the same extent as against A.

Transfer by ostensible owner.

41. Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be voidable on the ground that the transferor was not authorized to make it: provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith.

Transfer by person having authority to revoke former transfer.

42. Where a person transfers any immoveable property, reserving power to revoke the transfer, and subsequently transfers the property for consideration to another transferee, such transfer operates in favour of such transferee (subject to any condition attached to the exercise of the power) as a revocation of the former transfer to the extent of the power.

Illustration.

Illustration.

A lets a house to B, and reserves power to revoke the lease if, in the opinion of a specified surveyor, B should make a use of it detrimental to its value. Afterwards A, thinking that such a use has been made, lets the house to C. This operates as a revocation of B's lease subject to the opinion of the surveyor as to B's use of the house having been detrimental to its value.

Transfer by unauthorized person who subsequently acquires interest in property transferred.

43. Where a person erroneously represents that he is authorized to transfer certain immoveable property, and professes to transfer such property for consideration, such transfer shall, at the option of the transferee, operate on any interest which the transferor may acquire in such property, at any time during which the contract of transfer subsists.

Nothing in this section shall impair the right of transferees in good faith for consideration without notice of the existence of the said option.

Illustration.

A, a Hindú who has separated from his father B, sells to C three fields, X, Y and Z, representing that A is authorized to transfer the same. Of these fields Z does not belong to A, it having been retained by B on the partition; but on B's dying A as heir obtains Z. C, not having rescinded the contract of sale, may require A to deliver Z to him.

Transfer by one co-owner.

44. Where one of two or more co-owners of immoveable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling-house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him to joint possession or other common or part enjoyment of the house.

45. Where

Joint transfer for consideration.

45. Where immoveable property is transferred for consideration to two or more persons, and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property.

Transfer for consideration by persons having distinct interests.

46. Where immoveable property is transferred for consideration by persons having distinct interests therein, the transferors are, in the absence of a contract to the contrary, entitled to share in the consideration equally, where their interests in the property were of equal value, and, where such interests were of unequal value, proportionately to the value of their respective interests.

Illustrations.

(*a.*) A, owning a moiety, and B and C, each a quarter share, of mauza Sultánpur, exchange an eighth share of that mauza for a quarter share of mauza Lálpura. There being no agreement to the contrary, A is entitled to an eighth share in Lálpura, and B and C each to a sixteenth share in that mauza.

(*b.*) A, being entitled to a life-interest in mauza Atrali and B and C to the reversion, sell the mauza for Rs. 1,000. A's life-interest is ascertained to be worth Rs. 600, the reversion Rs. 400. A is entitled to receive Rs. 600 out of the purchase-money, B and C to receive Rs. 400.

Transfer by co-owners of share in common property.

47. Where several co-owners of immoveable property transfer a share therein without specifying that the transfer is to take effect on any particular share or shares of the transferors, the transfer, as among such transferors, takes effect on such shares equally where

where the shares were equal, and where they were unequal, proportionately to the extent of such shares.

Illustration.

A, the owner of an eight-anna share, and B and C, each the owner of a four-anna share, in mauza Sultánpur, transfer a two-anna share in the mauza to D, without specifying from which of their several shares the transfer is made. To give effect to the transfer one-anna share is taken from the share of A, and half an anna share from each of the shares of B and C.

Priority of rights created by transfer.

48. Where a person purports to create by transfer at different times rights in or over the same immoveable property, and such rights cannot all exist or be exercised to their full extent together, each later created right shall, in the absence of a special contract or reservation binding the earlier transferees, be subject to the rights previously created.

Transferee's right under policy.

49. Where immoveable property is transferred for consideration, and such property or any part thereof is at the date of the transfer insured against loss or damage by fire, the transferee, in case of such loss or damage, may, in the absence of a contract to the contrary, require any money which the transferor actually receives under the policy, or so much thereof as may be necessary, to be applied in reinstating the property.

Rent *bonâ fide* paid to holder under defective title.

50. No person shall be chargeable with any rents or profits of any immoveable property, which he has in good faith paid or delivered to any person of whom he in good faith held such property, notwithstanding it may afterwards appear that the person to whom such payment or delivery was made had no right to receive such rents or profits.

Illustration.

A lets a field to B at a rent of Rs. 50, and then transfers the field to C. B, having no notice of the transfer, in good faith pays the rent to A. B is not chargeable with the rent so paid.

Improvements made by *bonâ fide* holders under defective titles.

51. When the transferee of immoveable property makes any improvement on the property, believing in good faith that he is absolutely entitled thereto, and

and he is subsequently evicted therefrom by any person having a better title, the transferee has a right to require the person causing the eviction either to have the value of the improvement estimated and paid or secured to the transferee, or to sell his interest in the property to the transferee at the then market value thereof irrespective of the value of such improvement.

The amount to be paid or secured in respect of such improvement shall be the estimated value thereof at the time of the eviction.

When, under the circumstances aforesaid, the transferee has planted or sown on the property crops which are growing when he is evicted therefrom, he is entitled to such crops and to free ingress and egress to gather and carry them.

Transfer of property pending suit relating thereto.

52. During the active prosecution in any Court having authority in British India, or established beyond the limits of British India by the Governor General in Council, of a contentious suit or proceeding in which any right to immoveable property is directly and specifically in question, the property cannot be transferred or otherwise dealt with by any party to the suit or proceeding so as to affect the rights of any other party thereto under any decree or order which may be made therein, except under the authority of the Court and on such terms as it may impose.

Fraudulent transfer.

53. Every transfer of immoveable property, made with intent to defraud prior or subsequent transferees thereof for consideration, or co-owners or other persons having an interest in such property, or to defeat or delay the creditors of the transferor, is voidable at the option of any person so defrauded, defeated or delayed.

Where the effect of any transfer of immoveable property is to defraud, defeat or delay any such person, and such transfer is made gratuitously or for a grossly inadequate consideration, the transfer may be presumed to have been made with such intent as aforesaid.

Nothing

Nothing contained in this section shall impair the rights of any transferee in good faith and for consideration.

CHAPTER III.

Of Sales of Immoveable Property.

"Sale" defined.

54. "Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.

Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.

Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.

A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.

It does not, of itself, create any interest in or charge on such property.

Rights and liabilities of buyer and seller.

55. In the absence of a contract to the contrary, the buyer and the seller of immoveable property respectively are subject to the liabilities, and have the rights, mentioned in the rules next following, or such of them as are applicable to the property sold:

(1) The seller is bound—

(*a*) to disclose to the buyer any material defect in the property of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover;

(*b*) to produce to the buyer on his request for examination all documents of title relating to the property which are in the seller's possession or power;

(*c*) to

(*c*) to answer to the best of his information all relevant questions put to him by the buyer in respect to the property or the title thereto;

(*d*) on payment or tender of the amount due in respect of the price, to execute a proper conveyance of the property when the buyer tenders it to him for execution at a proper time and place;

(*e*) between the date of the contract of sale and the delivery of the property, to take as much care of the property and all documents of title relating thereto which are in his possession, as an owner of ordinary prudence would take of such property and documents;

(*f*) to give, on being so required, the buyer, or such person as he directs, such possession of the property as its nature admits;

(*g*) to pay all public charges and rent accrued due in respect of the property up to the date of the sale, the interest on all incumbrances on such property due on such date, and, except where the property is sold subject to incumbrances, to discharge all incumbrances on the property then existing.

(2) The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same:

provided that, where the sale is made by a person in a fiduciary character, he shall be deemed to contract with the buyer that the seller has done no act whereby the property is incumbered or whereby he is hindered from transferring it.

The benefit of the contract mentioned in this rule shall be annexed to, and shall go with, the interest of the transferee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

(3) Where the whole of the purchase-money has been paid to the seller, he is also bound to deliver to the buyer all documents of title relating to the property which are in the seller's possession or power:

provided

provided that (*a*), where the seller retains any part of the property comprised in such documents, he is entitled to retain them all, and (*b*), where the whole of such property is sold to different buyers, the buyer of the lot of greatest value is entitled to such documents. But in case (*a*) the seller, and in case (*b*) the buyer of the lot of greatest value, is bound, upon every reasonable request by the buyer, or by any of the other buyers, as the case may be, and at the cost of the person making the request, to produce the said documents and furnish such true copies thereof or extracts therefrom as he may require; and in the meantime, the seller, or the buyer of the lot of greatest value, as the case may be, shall keep the said documents safe, uncancelled and undefaced, unless prevented from so doing by fire or other inevitable accident.

(4) The seller is entitled—

(*a*) to the rents and profits of the property till the ownership thereof passes to the buyer;

(*b*) where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, to a charge upon the property in the hands of the buyer for the amount of the purchase-money, or any part thereof remaining unpaid, and for interest on such amount or part.

(5) The buyer is bound—

(*a*) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest;

(*b*) to pay or tender, at the time and place of completing the sale, the purchase-money to the seller or such person as he directs: provided that, where the property is sold free from incumbrances, the buyer may retain out of the purchase-money the amount of any incumbrances on the property existing at the date of the sale, and shall pay the amount so retained to the persons entitled thereto;

(*c*) where

(*c*) where the ownership of the property has passed to the buyer, to bear any loss arising from the destruction, injury or decrease in value of the property not caused by the seller;

(*d*) where the ownership of the property has passed to the buyer, as between himself and the seller, to pay all public charges and rent which may become payable in respect of the property, the principal moneys due on any incumbrances subject to which the property is sold, and the interest thereon afterwards accruing due.

(6) The buyer is entitled—

(*a*) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof;

(*b*) unless he has improperly declined to accept delivery of the property, to a charge on the property, as against the seller and all persons claiming under him with notice of the payment, to the extent of the seller's interest in the property, for the amount of any purchase-money properly paid by the buyer in anticipation of the delivery and for interest on such amount; and, when he properly declines to accept the delivery, also for the earnest (if any) and for the costs (if any) awarded to him of a suit to compel specific performance of the contract or to obtain a decree for its rescission.

An omission to make such disclosures as are mentioned in this section, paragraph (1), clause (*a*), and paragraph (5), clause (*a*), is fraudulent.

Sale of one of two properties subject to a common charge.

56. Where two properties are subject to a common charge, and one of the properties is sold, the buyer is, as against the seller, in the absence of a contract to the contrary, entitled to have the charge satisfied out of the other property, so far as such property will extend.

Discharge of Incumbrances on Sale.

Provision by Court for incumbrances, and sale freed therefrom.

57. (*a*) Where immoveable property subject to any incumbrance, whether immediately payable or not, is sold by the Court or in execution of a decree, or out of court, the Court may, if it thinks fit, on the application

application of any party to the sale, direct or allow payment into court,

(1) in case of an annual or monthly sum charged on the property, or of a capital sum charged on a determinable interest in the property,—of such amount as, when invested in securities of the Government of India, the Court considers will be sufficient, by means of the interest thereof, to keep down or otherwise provide for that charge, and

(2) in any other case of a capital sum charged on the property,—of the amount sufficient to meet the incumbrance and any interest due thereon.

But in either case there shall also be paid into court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the Court for special reasons (which it shall record) thinks fit to require a larger additional amount.

(*b*) Thereupon the Court may, if it thinks fit, and after notice to the incumbrancer, unless the Court, for reasons to be recorded in writing, thinks fit to dispense with such notice, declare the property to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale, and give directions for the retention and investment of the money in court.

(*c*) After notice served on the persons interested in or entitled to the money or fund in court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

(*d*) An appeal shall lie from any declaration, order or direction under this section as if the same were a decree.

(*e*) In

(*e*) In this section "Court" means (1) a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, (2) the Court of a District Judge within the local limits of whose jurisdiction the property or any part thereof is situate, (3) any other Court which the Local Government may, from time to time, by notification in the official Gazette, declare to be competent to exercise the jurisdiction conferred by this section.

CHAPTER IV.

OF MORTGAGES OF IMMOVEABLE PROPERTY AND CHARGES.

"Mortgage," "mortgagor" and "mortgagee" defined.

58. (*a*) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed.

Simple mortgage.

(*b*) Where, without delivering possession of the mortgaged property, the mortgagor binds himself personally to pay the mortgage-money, and agrees, expressly or impliedly, that, in the event of his failing to pay according to his contract, the mortgagee shall have a right to cause the mortgaged property to be sold and the proceeds of sale to be applied, so far as may be necessary, in payment of the mortgage-money, the transaction is called a simple mortgage and the mortgagee a simple mortgagee.

Mortgage by conditional sale.

(*c*) Where the mortgagor ostensibly sells the mortgaged property—

on condition that on default of payment of the mortgage-money on a certain date the sale shall become absolute, or

on

on condition that on such payment being made the sale shall become void, or

on condition that on such payment being made the buyer shall transfer the property to the seller,

the transaction is called a mortgage by conditional sale and the mortgagee a mortgagee by conditional sale.

Usufructuary mortgage.

(*d*) Where the mortgagor delivers possession of the mortgaged property to the mortgagee, and authorises him to retain such possession until payment of the mortgage-money, and to receive the rents and profits accruing from the property and to appropriate them in lieu of interest, or in payment of the mortgage-money, or partly in lieu of interest and partly in payment of the mortgage-money, the transaction is called an usufructuary mortgage and the mortgagee an usufructuary mortgagee.

English mortgage.

(*e*) Where the mortgagor binds himself to re-pay the mortgage-money on a certain date, and transfers the mortgaged property absolutely to the mortgagee, but subject to a proviso that he will re-transfer it to the mortgagor upon payment of the mortgage-money as agreed, the transaction is called an English mortgage.

Mortgage when to be by assurance.

59. Where the principal money secured is one hundred rupees or upwards, a mortgage can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses.

Where the principal money secured is less than one hundred rupees, a mortgage may be effected either by an instrument signed and attested as aforesaid, or (except in the case of a simple mortgage) by delivery of the property.

Nothing in this section shall be deemed to render invalid mortgages made in the towns of Calcutta, Madras, Bombay, Karáchí and Rangoon, by delivery to a creditor or his agent of documents of title to immoveable property, with intent to create a security thereon.

Rights

Rights and Liabilities of Mortgagor.

Right of mortgagor to redeem.

60. At any time after the principal money has become payable, the mortgagor has a right, on payment or tender, at a proper time and place, of the mortgage-money, to require the mortgagee (*a*) to deliver the mortgage-deed, if any, to the mortgagor, (*b*) where the mortgagee is in possession of the mortgaged property, to deliver possession thereof to the mortgagor, and (*c*) at the cost of the mortgagor either to re-transfer the mortgaged property to him or to such third person as he may direct, or to execute and (where the mortgage has been effected by a registered instrument) to have registered an acknowledgment in writing that any right in derogation of his interest transferred to the mortgagee has been extinguished:

Provided that the right conferred by this section has not been extinguished by act of the parties or by order of a Court.

The right conferred by this section is called a right to redeem, and a suit to enforce it is called a suit for redemption.

Nothing in this section shall be deemed to render invalid any provision to the effect that, if the time fixed for payment of the principal money has been allowed to pass or no such time has been fixed, the mortgagee shall be entitled to reasonable notice before payment or tender of such money.

Redemption of portion of mortgaged property.

Nothing in this section shall entitle a person interested in a share only of the mortgaged property to redeem his own share only, on payment of a proportionate part of the amount remaining due on the mortgage, except where a mortgagee, or, if there are more mortgagees than one, all such mortgagees, has or have acquired, in whole or in part, the share of a mortgagor.

Right to redeem one of two properties separately mortgaged.

61. A mortgagor seeking to redeem any one mortgage shall, in the absence of a contract to the contrary, be entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, on property

property other than that comprised in the mortgage which he seeks to redeem.

Illustration.

A, the owner of farms Z and Y, mortgages Z to B for Rs. 1,000. A afterwards mortgages Y to B for Rs. 1,000, making no stipulation as to any additional charge on Z. A may institute a suit for the redemption of the mortgage on Z alone.

Right of usufructuary mortgagor to recover possession.

62. In the case of a usufructuary mortgage, the mortgagor has a right to recover possession of the property—

(*a*) where the mortgagee is authorized to pay himself the mortgage-money from the rents and profits of the property,—when such money is paid;

(*b*) where the mortgagee is authorized to pay himself from such rents and profits the interest of the principal money,—when the term (if any), prescribed for the payment of the mortgage-money has expired and the mortgagor pays or tenders to the mortgagee the principal money or deposits it in court as hereinafter provided.

Accession to mortgaged property.

63. Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, received any accession, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled as against the mortgagee to such accession.

Accession acquired in virtue of transferred ownership.

Where such accession has been acquired at the expense of the mortgagee, and is capable of separate possession or enjoyment without detriment to the principal property, the mortgagor desiring to take the accession must pay to the mortgagee the expense of acquiring it. If such separate possession or enjoyment is not possible, the accession must be delivered with the property, the mortgagor being liable, in the case of an acquisition necessary to preserve the property from destruction, forfeiture or sale, or made with his assent, to pay the proper cost thereof, as an addition to the principal money, at the same rate of interest.

In

In the case last mentioned the profits, if any, arising from the accession shall be credited to the mortgagor.

Where the mortgage is usufructuary and the accession has been acquired at the expense of the mortgagee, the profits, if any, arising from the accession shall, in the absence of a contract to the contrary, be set off against interest, if any, payable on the money so expended.

Renewal of mortgaged lease.

64. Where the mortgaged property is a lease for a term of years, and the mortgagee obtains a renewal of the lease, the mortgagor, upon redemption, shall, in the absence of a contract by him to the contrary, have the benefit of the new lease.

Implied contracts by mortgagor.

65. In the absence of a contract to the contrary, the mortgagor shall be deemed to contract with the mortgagee,

(*a*) that the interest which the mortgagor professes to transfer to the mortgagee subsists, and that the mortgagor has power to transfer the same;

(*b*) that the mortgagor will defend, or, if the mortgagee be in possession of the mortgaged property, enable him to defend, the mortgagor's title thereto;

(*c*) that the mortgagor will, so long as the mortgagee is not in possession of the mortgaged property, pay all public charges accruing due in respect of the property;

(*d*) and, where the mortgaged property is a lease for a term of years, that the rent payable under the lease, the conditions contained therein, and the contracts binding on the lessee have been paid, performed and observed down to the commencement of the mortgage; and that the mortgagor will, so long as the security exists and the mortgagee is not in possession of the mortgaged property, pay the rent reserved by the lease, or, if the lease be renewed, the renewed lease, perform the conditions contained therein and observe the contracts binding on the lessee, and indemnify the mortgagee against all claims sustained by reason of the non-payment of the said rent or the non-

non-performance or non-observance of the said conditions and contracts;

(*e*) and, where the mortgage is a second or subsequent incumbrance on the property, that the mortgagor will pay the interest from time to time accruing due on each prior incumbrance as and when it becomes due, and will at the proper time discharge the principal money due on such prior incumbrance.

Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage.

The benefit of the contracts mentioned in this section shall be annexed to and shall go with the interest of the mortgagee as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

Waste by mortgagor in possession.

66. A mortgagor in possession of the mortgaged property is not liable to the mortgagee for allowing the property to deteriorate; but he must not commit any act which is destructive or permanently injurious thereto, if the security is insufficient or will be rendered insufficient by such act.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

Rights and Liabilities of Mortgagee.

Right to foreclosure or sale.

67. In the absence of a contract to the contrary, the mortgagee has, at any time after the mortgage-money has become payable to him, and before a decree has been made for the redemption of the mortgaged property, or the mortgage-money has been paid or deposited as hereinafter provided, a right to obtain from the Court an order that the mortgagor shall be absolutely debarred of his right to redeem the property, or an order that the property be sold.

A suit

A suit to obtain an order that a mortgagor shall be absolutely debarred of his right to redeem the mortgaged property is called a suit for foreclosure.

Nothing in this section shall be deemed—

(*a*) to authorize a simple mortgagee as such to institute a suit for foreclosure, or an usufructuary mortgagee as such to institute a suit for foreclosure or sale, or a mortgagee by conditional sale as such to institute a suit for sale; or

(*b*) to authorize a mortgagor who holds the mortgagee's rights as his trustee or legal representative, and who may sue for a sale of the property, to institute a suit for foreclosure; or

(*c*) to authorize the mortgagee of a railway, canal or other work in the maintenance of which the public are interested, to institute a suit for foreclosure or sale; or

(*d*) to authorize a person interested in part only of the mortgage-money to institute a suit relating only to a corresponding part of the mortgaged property, unless the mortgagees have, with the consent of the mortgagor, severed their interests under the mortgage.

Right to sue for mortgage-money.

68. The mortgagee has a right to sue the mortgagor for the mortgage-money in the following cases only:—

(*a*) where the mortgagor binds himself to repay the same:

(*b*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor:

(*c*) where, the mortgagee being entitled to possession of the property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any other person.

Where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property has been wholly or partially destroyed, or

or the security is rendered insufficient as defined in section sixty-six, the mortgagee may require the mortgagor to give him within a reasonable time another sufficient security for his debt, and, if the mortgagor fails so to do, may sue him for the mortgage-money.

Power of sale when valid.

69. A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases (namely)—

(*a*) where the mortgage is an English mortgage, and neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist;

(*b*) where the mortgagee is the Secretary of State for India in Council;

(*c*) where the mortgaged property or any part thereof is situate within the towns of Calcutta, Madras, Bombay, Karáchí or Rangoon.

But no such power shall be exercised unless and until—

(1) notice in writing requiring payment of the principal money has been served on the mortgagor, or on one of several mortgagors, and default has been made in payment of the principal money, or of part thereof, for three months after such service; or

(2) some interest under the mortgage amounting at least to five hundred rupees is in arrear and unpaid for three months after becoming due.

When a sale has been made in professed exercise of such a power, the title of the purchaser shall not be impeachable on the ground that no case had arisen to authorise the sale, or that due notice was not given, or that the power was otherwise improperly or irregularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

The

The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances, if any, to which the sale is not made subject, or after payment into court under section fifty-seven of a sum to meet any prior incumbrance, shall, in the absence of a contract to the contrary, be held by him in trust to be applied by him, first, in payment of all costs, charges and expenses properly incurred by him as incident to the sale or any attempted sale; and, secondly, in discharge of the mortgage-money and costs and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property or authorized to give receipts for the proceeds of the sale thereof.

Nothing in the former part of this section applies to powers conferred before this Act comes into force.

The powers and provisions contained in sections six to nineteen (both inclusive) of the Trustees and Mortgagees' Powers Act, 1866, shall be deemed to apply to English mortgages, wherever in British India the mortgaged property may be situate, when neither the mortgagor nor the mortgagee is a Hindú, Muhammadan or Buddhist.

Accession to mortgaged property.

70. If, after the date of a mortgage, any accession is made to the mortgaged property, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to such accession.

Illustrations.

(*a.*) A mortgages to B a certain field bordering on a river. The field is increased by alluvion. For the purposes of his security, B is entitled to the increase.

(*b.*) A mortgages a certain plot of building land to B and afterwards erects a house on the plot. For the purposes of his security, B is entitled to the house as well as the plot.

Renewal of mortgaged lease.

71. When the mortgaged property is a lease for a term of years, and the mortgagor obtains a renewal of the lease, the mortgagee, in the absence of a contract to the contrary, shall, for the purposes of the security, be entitled to the new lease.

72. When

Rights of mortgagee in possession.

72. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he may spend such money as is necessary—

(*a*) for the due management of the property and the collection of the rents and profits thereof;

(*b*) for its preservation from destruction, forfeiture or sale;

(*c*) for supporting the mortgagor's title to the property;

(*d*) for making his own title thereto good against the mortgagor; and

(*e*) when the mortgaged property is a renewable leasehold, for the renewal of the lease;

and may, in the absence of a contract to the contrary, add such money to the principal money, at the rate of interest payable on the principal, and, where no such rate is fixed, at the rate of nine per cent. per annum.

Where the property is by its nature insurable, the mortgagee may also, in the absence of a contract to the contrary, insure and keep insured against loss or damage by fire the whole or any part of such property; and the premiums paid for any such insurance shall be a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate. But the amount of such insurance shall not exceed the amount specified in this behalf in the mortgage-deed or (if no such amount is therein specified) two-thirds of the amount that would be required in case of total destruction to reinstate the property insured.

Nothing in this section shall be deemed to authorize the mortgagee to insure when an insurance of the property is kept up by or on behalf of the mortgagor to the amount in which the mortgagee is hereby authorized to insure.

Charge on proceeds of revenue-sale.

73. Where mortgaged property is sold through failure to pay arrears of revenue or rent due in respect thereof, the mortgagee has a charge on the surplus,

surplus, if any, of the proceeds, after payment thereout of the said arrears, for the amount remaining due on the mortgage, unless the sale has been occasioned by some default on his part.

Right of subsequent mortgagee to pay off prior mortgagee.

74. Any second or other subsequent mortgagee may, at any time after the amount due on the next prior mortgage has become payable, tender such amount to the next prior mortgagee, and such mortgagee is bound to accept such tender and to give a receipt for such amount; and (subject to the provisions of the law for the time being in force regulating the registration of documents) the subsequent mortgagee shall, on obtaining such receipt, acquire, in respect of the property, all the rights and powers of the mortgagee, as such, to whom he has made such tender.

Rights of mesne mortgagee against prior and subsequent mortgagees.

75. Every second or other subsequent mortgagee has, so far as regards redemption, foreclosure and sale of the mortgaged property, the same rights against the prior mortgagee or mortgagees as his mortgagor has against such prior mortgagee or mortgagees, and the same rights against the subsequent mortgagees (if any) as he has against his mortgagor.

Liabilities of mortgagee in possession.

76. When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property,—

(*a*) he must manage the property as a person of ordinary prudence would manage it if it were his own;

(*b*) he must use his best endeavours to collect the rents and profits thereof;

(*c*) he must, in the absence of a contract to the contrary, out of the income of the property, pay the Government-revenue, all other charges of a public nature accruing due in respect thereof during such possession and any arrears of rent in default of payment of which the property may be summarily sold;

(*d*) he must, in the absence of a contract to the contrary, make such necessary repairs of the property as he can pay for out of the rents and profits thereof after

after deducting from such rents and profits the payments mentioned in clause (*c*) and the interest on the principal money;

(*e*) he must not commit any act which is destructive or permanently injurious to the property;

(*f*) where he has insured the whole or any part of the property against loss or damage by fire, he must, in case of such loss or damage, apply any money which he actually receives under the policy, or so much thereof as may be necessary, in reinstating the property, or, if the mortgagor so directs, in reduction or discharge of the mortgage-money;

(*g*) he must keep clear, full and accurate accounts of all sums received and spent by him as mortgagee, and, at any time during the continuance of the mortgage, give the mortgagor, at his request and cost, true copies of such accounts and of the vouchers by which they are supported;

(*h*) his receipts from the mortgaged property, or, where such property is personally occupied by him, a fair occupation-rent in respect thereof, shall, after deducting the expenses mentioned in clauses (*c*) and (*d*), and interest thereon, be debited against him in reduction of the amount (if any) from time to time due to him on account of interest on the mortgage-money and, so far as such receipts exceed any interest due, in reduction or discharge of the mortgage-money; the surplus, if any, shall be paid to the mortgagor;

(*i*) when the mortgagor tenders, or deposits in manner hereinafter provided, the amount for the time being due on the mortgage, the mortgagee must, notwithstanding the provisions in the other clauses of this section, account for his gross receipts from the mortgaged property from the date of the tender or from the earliest time when he could take such amount out of court, as the case may be.

Loss occasioned by his default.

If the mortgagee fail to perform any of the duties imposed upon him by this section, he may, when accounts are taken in pursuance of a decree made under this

this chapter, be debited with the loss, if any, occasioned by such failure.

Receipts in lieu of interest.

77. Nothing in section seventy-six, clauses (*b*), (*d*), (*g*) and (*h*), applies to cases where there is a contract between the mortgagee and the mortgagor that the receipts from the mortgaged property shall, so long as the mortgagee is in possession of the property, be taken in lieu of interest on the principal money, or in lieu of such interest and defined portions of the principal.

Priority.

Postponement of prior mortgagee.

78. Where, through the fraud, misrepresentation or gross neglect of a prior mortgagee, another person has been induced to advance money on the security of the mortgaged property, the prior mortgagee shall be postponed to the subsequent mortgagee.

Mortgage to secure uncertain amount when maximum is expressed.

79. If a mortgage made to secure future advances, the performance of an engagement or the balance of a running account, expresses the maximum to be secured thereby, a subsequent mortgage of the same property shall, if made with notice of the prior mortgage, be postponed to the prior mortgage in respect of all advances or debits not exceeding the maximum, though made or allowed with notice of the subsequent mortgage.

Illustration.

A mortgages Sultánpur to his bankers, B & Co., to secure the balance of his account with them to the extent of Rs. 10,000. A then mortgages Sultánpur to C, to secure Rs. 10,000, C having notice of the mortgage to B & Co., and C gives notice to B & Co. of the second mortgage. At the date of the second mortgage, the balance due to B & Co. does not exceed Rs. 5,000. B & Co. subsequently advance to A sums making the balance of the account against him exceed the sum of Rs. 10,000. B & Co. are entitled, to the extent of Rs. 10,000, to priority over C.

Tacking abolished.

80. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security. And, except in the case provided for by section seventy-nine, no mortgagee

gagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Marshalling and Contribution.

Marshalling securities.

81. If the owner of two properties mortgages them both to one person and then mortgages one of the properties to another person who has not notice of the former mortgage, the second mortgagee is, in the absence of a contract to the contrary, entitled to have the debt of the first mortgagee satisfied out of the property not mortgaged to the second mortgagee so far as such property will extend, but not so as to prejudice the rights of the first mortgagee or of any other person having acquired for valuable consideration an interest in either property.

Contribution to mortgage-debt.

82. Where several properties, whether of one or several owners, are mortgaged to secure one debt, such properties are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, after deducting from the value of each property the amount of any other incumbrance to which it is subject at the date of the mortgage.

Where, of two properties belonging to the same owner, one is mortgaged to secure one debt and then both are mortgaged to secure another debt, and the former debt is paid out of the former property, each property is, in the absence of a contract to the contrary, liable to contribute rateably to the latter debt after deducting the amount of the former debt from the value of the property out of which it has been paid.

Nothing in this section applies to a property liable under section eighty-one to the claim of the second mortgagee.

Deposit in Court.

Power to deposit in court money

83. At any time after the principal money has become payable and before a suit for redemption of the

due on mortgage.

the mortgaged property is barred, the mortgagor, or any other person entitled to institute such suit, may deposit, in any court in which he might have instituted such suit, to the account of the mortgagee, the amount remaining due on the mortgage.

Right to money deposited by mortgagor.

The Court shall thereupon cause written notice of the deposit to be served on the mortgagee, and the mortgagee may, on presenting a petition (verified in manner prescribed by law for the verification of plaints) stating the amount then due on the mortgage, and his willingness to accept the money so deposited in full discharge of such amount, and on depositing in the same court the mortgage-deed if then in his possession or power, apply for and receive the money, and the mortgage-deed so deposited shall be delivered to the mortgagor or such other person as aforesaid.

Cessation of interest.

84. When the mortgagor or such other person as aforesaid has tendered or deposited in court under section eighty-three the amount remaining due on the mortgage, interest on the principal money shall cease from the date of the tender or as soon as the mortgagor or such other person as aforesaid has done all that has to be done by him to enable the mortgagee to take such amount out of court, as the case may be.

Nothing in this section or in section eighty-three shall be deemed to deprive the mortgagee of his right to interest when there exists a contract that he shall be entitled to reasonable notice before payment or tender of the mortgage-money.

Suits for Foreclosure, Sale or Redemption.

Parties to suits for foreclosure, sale and redemption.

85. Subject to the provisions of the Code of Civil Procedure, section 437, all persons having an interest in the property comprised in a mortgage must be joined as parties to any suit under this chapter relating to such mortgage: Provided that the plaintiff has notice of such interest.

Foreclosure and Sale.

Decree in foreclosure-suit.

86. In a suit for foreclosure, if the plaintiff succeeds, the Court shall make a decree, ordering that an account

account be taken of what will be due to the plaintiff for principal and interest on the mortgage, and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree,

and ordering that, upon the defendant paying to the plaintiff or into court the amount so due, on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the plaintiff shall deliver up to the defendant, or to such person as he appoints, all documents in his possession or power relating to the mortgaged property, and shall transfer the property to the defendant free from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims; and shall, if necessary, put the defendant into possession of the property; but

that, if the payment is not made on or before the day to be fixed by the Court, the defendant shall be absolutely debarred of all right to redeem the property.

Procedure in case of payment of amount due.

87. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put into possession of the mortgaged property.

Order absolute for foreclosure.

If such payment is not so made, the plaintiff may apply to the Court for an order that the defendant and all persons claiming through or under him be debarred absolutely of all right to redeem the mortgaged property, and the Court shall, then pass such order, and may, if necessary, deliver possession of the property to the plaintiff:

Power to enlarge time.

Provided that the Court may, upon good cause shewn, and upon such terms, if any, as it thinks fit, from time to time postpone the day appointed for such payment.

On the passing of an order under the second paragraph of this section the debt secured by the mortgage shall be deemed to be discharged.

In

In the Code of Civil Procedure, schedule IV, No. 129, for the words "Final decree," the words "Decree absolute" shall be substituted.

Decree for sale.

88. In a suit for sale, if the plaintiff succeeds, the Court shall pass a decree to the effect mentioned in the first and second paragraphs of section eighty-six, and also ordering that, in default of the defendant paying as therein mentioned, the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is so found due to the plaintiff, and that the balance, if any, be paid to the defendant or other persons entitled to receive the same.

Power to decree sale in foreclosure-suit.

In a suit for foreclosure, if the plaintiff succeeds and the mortgage is not a mortgage by conditional sale, the Court may, at the instance of the plaintiff, or of any person interested either in the mortgage-money or in the right of redemption, if it thinks fit, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including, if it thinks fit, the deposit in court of a reasonable sum, fixed by the Court, to meet the expenses of sale and to secure the performance of the terms.

Procedure when defendant pays amount due.

89. If in any case under section eighty-eight the defendant pays to the plaintiff or into court on the day fixed as aforesaid the amount due under the mortgage, the costs, if any, awarded to him and such subsequent costs as are mentioned in section ninety-four, the defendant shall (if necessary) be put in possession of the mortgaged property; but if such payment is not so made, the plaintiff or the defendant, as the case may be, may apply to the Court for an order absolute for sale of the mortgaged property, and the Court shall then pass an order that such property, or a sufficient part thereof, be sold, and that the proceeds of the sale be dealt with as is mentioned in section eighty-eight; and thereupon the defendant's right to redeem and the security shall both be extinguished.

Order absolute for sale.

Recovery of balance due on mortgage.

90. When the nett proceeds of any such sale are insufficient to pay the amount due for the time being on

on the mortgage, if the balance is legally recoverable from the defendant otherwise than out of the property sold, the Court may pass a decree for such sum.

Redemption.

91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property:— Who may sue for redemption.

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) having any interest in or charge upon the property;

(*b*) any person having any interest in, or charge upon, the right to redeem the property;

(*c*) any surety for the payment of the mortgage-debt or any part thereof;

(*d*) the guardian of the property of a minor mortgagor on behalf of such minor;

(*e*) the committee or other legal curator of a lunatic or idiot mortgagor on behalf of such lunatic or idiot;

(*f*) the judgment-creditor of the mortgagor, when he has obtained execution by attachment of the mortgagor's interest in the property;

(*g*) a creditor of the mortgagor who has, in a suit for the administration of his estate, obtained a decree for sale of the mortgaged property.

92. In a suit for redemption, if the plaintiff succeeds, the Court shall pass a decree ordering— Decree in redemption-suit.

that an account be taken of what will be due to the defendant for the mortgage-money and for his costs of the suit, if any, awarded to him, on the day next hereinafter referred to, or declaring the amount so due at the date of such decree;

that, upon the plaintiff paying to the defendant or into court the amount so due on a day within six months from the date of declaring in court the amount so due, to be fixed by the Court, the defendant shall deliver up to the plaintiff or to such person as he appoints, all documents in his possession or power relating

relating to the mortgaged property, and shall retransfer it to the plaintiff free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, when the defendant claims by derived title, by those under whom he claims, and shall, if necessary, put the plaintiff into possession of the mortgaged property; and

that if such payment is not made on or before the day to be fixed by the Court, the plaintiff shall (unless the mortgage be simple or usufructuary) be absolutely debarred of all right to redeem the property, or (unless the mortgage be by conditional sale) that the property be sold.

In case of redemption, possession.

93. If payment is made of such amount and of such subsequent costs as are mentioned in section ninety-four, the plaintiff shall, if necessary, be put into possession of the mortgaged property.

In default, foreclosure or sale.

If such payment is not so made, the defendant may (unless the mortgage is simple or usufructuary) apply to the Court for an order that the plaintiff and all persons claiming through or under him be debarred absolutely of all right to redeem, or (unless the mortgage is by conditional sale) for an order that the mortgaged property be sold.

If he applies for the former order, the Court shall pass an order that the plaintiff and all persons claiming through or under him be absolutely debarred of all right to redeem the mortgaged property, and may, if necessary, deliver possession of the property to the defendant.

If he applies for the latter order, the Court shall pass an order that such property or a sufficient part thereof be sold, and that the proceeds of the sale (after defraying thereout the expenses of the sale) be paid into court and applied in payment of what is found due to the defendant, and that the balance be paid to the plaintiff or other persons entitled to receive the same.

On the passing of any order under this section the plaintiff's right to redeem and the security shall,

as

as regards the property affected by the order, both be extinguished:

Provided that the Court may, upon good cause shown, and upon such terms, if any, as it thinks fit, from time to time postponé the day fixed under section ninety-two for payment to the defendant. Power to enlarge time.

94. In finally adjusting the amount to be paid to a mortgagee in case of a redemption or a sale by the Court under this chapter, the Court shall, unless the conduct of the mortgagee has been such as to disentitle him to costs, add to the mortgage-money such costs of suit as have been properly incurred by him since the decree for foreclosure, redemption or sale up to the time of actual payment. Costs of mortgagee subsequent to decree.

95. Where one of several mortgagors redeems the mortgaged property and obtains possession thereof, he has a charge on the share of each of the other co-mortgagors in the property for his proportion of the expenses properly incurred in so redeeming and obtaining possession. Charge of one of several co-mortgagors who redeems.

Sale of Property subject to prior Mortgage.

96. If any property the sale of which is directed under this chapter is subject to a prior mortgage, the court may, with the consent of the prior mortgagee, order that the property be sold free from the same, giving to such prior mortgagee the same interest in the proceeds of the sale as he had in the property sold. Sale of property subject to prior mortgage.

97. Such proceeds shall be brought into court and applied as follows:— Application of proceeds.

first, in payment of all expenses incident to the sale or properly incurred in any attempted sale;

secondly, if the property has been sold free from any prior mortgage, in payment of whatever is due on account of such mortgage;

thirdly, in payment of all interest due on account of the mortgage in consequence whereof the sale was directed, and of the costs of the suit in which the decree directing the sale was made;

fourthly,

fourthly, in payment of the principal money due on account of that mortgage; and

lastly, the residue (if any) shall be paid to the person proving himself to be interested in the property sold, or, if there be more such persons than one, then to such persons according to their respective interests therein or upon their joint receipt.

Nothing in this section or in section ninety-six shall be deemed to affect the powers conferred by section fifty-seven.

Anomalous Mortgages.

Mortgage not described in section 58, clauses (*b*), (*c*), (*d*) and (*e*).

98. In the case of a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage, or a combination of the first and third, or the second and third, of such forms, the rights and liabilities of the parties shall be determined by their contract as evidenced in the mortgage-deed, and, so far as such contract does not extend, by local usage.

Attachment of Mortgaged Property.

Attachment of mortgaged property.

99. Where a mortgagee in execution of a decree for the satisfaction of any claim, whether arising under the mortgage or not, attaches the mortgaged property, he shall not be entitled to bring such property to sale otherwise than by instituting a suit under section sixty-seven, and he may institute such suit notwithstanding anything contained in the Code of Civil Procedure, section 43.

Charges.

Charges.

100. Where immoveable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections eighty-one and eighty-two and all the provisions hereinbefore contained as to

to a mortgagee instituting a suit for the sale of the mortgaged property shall, so far as may be, apply to the person having such charge.

Nothing in this section applies to the charge of a trustee on the trust-property for expenses properly incurred in the execution of his trust.

101. Where the owner of a charge or other incumbrance on immoveable property is or becomes absolutely entitled to that property, the charge or incumbrance shall be extinguished, unless he declares, by express words or necessary implication, that it shall continue to subsist, or such continuance would be for his benefit. Extinguishment of charges.

Notice and Tender.

102. Where the person on or to whom any notice or tender is to be served or made under this chapter does not reside in the district in which the mortgaged property or some part thereof is situate, service or tender on or to an agent holding a general power-of-attorney from such person or otherwise duly authorized to accept such service or tender shall be deemed sufficient. Service or tender on or to agent.

Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown to the person required to serve the notice, the latter person may apply to any Court in which a suit might be brought for redemption of the mortgaged property, and such Court shall direct in what manner such notice shall be served, and any notice served in compliance with such direction shall be deemed sufficient.

Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown to the person desiring to make the tender, the latter person may deposit in such court as last aforesaid the amount sought to be tendered, and such deposit shall have the effect of a tender of such amount.

103. Where, under the provisions of this chapter, a notice is to be served on or by, or a tender or deposit Notice, &c., to or by person in-

competent to contract.

deposit made or accepted or taken out of court by, any person incompetent to contract, such notice may be served, or tender or deposit made, accepted or taken, by the legal curator of the property of such person; but where there is no such curator, and it is requisite or desirable in the interests of such person that a notice should be served or a tender or deposit made under the provisions of this chapter, application may be made to any Court in which a suit might be brought for the redemption of the mortgage to appoint a guardian *ad litem* for the purpose of serving or receiving service of such notice, or making or accepting such tender, or making or taking out of court such deposit, and for the performance of all consequential acts which could or ought to be done by such person if he were competent to contract; and the provisions of Chapter XXXI of the Code of Civil Procedure shall, so far as may be, apply to such application and to the parties thereto and to the guardian appointed thereunder.

Power to make rules.

104. The High Court may, from time to time, make rules consistent with this Act for carrying out, in itself and in the Courts of Civil Judicature subject to its superintendence, the provisions contained in this chapter.

CHAPTER V.

Of Leases of Immoveable Property.

Lease defined.

105. A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms.

Lessor, lessee, premium and rent defined.

The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and

and the money, share, service or other thing to be so rendered is called the rent.

106. In the absence of a contract or local law or usage to the contrary, a lease of immoveable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable, on the part of either lessor or lessee, by six months' notice expiring with the end of a year of the tenancy; and a lease of immoveable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Duration of certain leases in absence of written contract or local usage.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and tendered or delivered either personally to the party who is intended to be bound by it, or to one of his family or servants at his residence, or (if such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. A lease of immoveable property from year to year, or for any term exceeding one year, or reserving a yearly rent, can be made only by a registered instrument.

Leases how made.

All other leases of immoveable property may be made either by an instrument or by oral agreement.

108. In the absence of a contract or local usage to the contrary, the lessor and the lessee of immoveable property, as against one another, respectively, possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased:—

Rights and liabilities of lessor and lessee.

A.—Rights and Liabilities of the Lessor.

(*a*) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its intended use, of which the former is and the latter is not aware, and which the latter could not with ordinary care discover:

(*b*) the

(*b*) the lessor is bound on the lessee's request to put him in possession of the property:

(*c*) the lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contracts binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit of such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B.—Rights and Liabilities of the Lessee.

(*d*) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force) shall be deemed to be comprised in the lease:

(*e*) if by fire, tempest or flood, or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void:

Provided that, if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision:

(*f*) if the lessor neglects to make, within a reasonable time after notice, any repairs which he is bound to make to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from the rent, or otherwise recover it from the lessor:

(*g*) if the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor:

(*h*) the

(*h*) the lessee may remove, at any time during the continuance of the lease, all things which he has attached to the earth: provided he leaves the property in the state in which he received it:

(*i*) when a lease of uncertain duration determines by any means except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them:

(*j*) the lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease:

nothing in this clause shall be deemed to authorize a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards, to assign his interest as such tenant, farmer or lessee:

(*k*) the lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest:

(*l*) the lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf:

(*m*) the lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof and give or leave notice of

any

any defect in such condition ; and, when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left:

(*n*) if the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor:

(*o*) the lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own ; but he must not use, or permit another to use, the property for a purpose other than that for which it was leased, or fell timber, pull down or damage buildings, work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto:

(*p*) he must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes :

(*q*) on the determination of the lease, the lessee is bound to put the lessor into possession of the property.

Rights of lessor's transferee.

109. If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contract to the contrary, shall possess all the rights and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease, unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer

transfer has been made, pays rent to the lessor, the lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and, in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

Exclusion of day on which term commences.

110. Where the time limited by a lease of immoveable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.

Where the time so limited is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.

Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

Determination of lease.

111. A lease of immoveable property determines—

(*a*) by efflux of the time limited thereby:

(*b*) where such time is limited conditionally on the happening of some event—by the happening of such event:

(*c*) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the the happening of such event:

(*d*) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right:

(*e*) by

(*e*) by express surrender; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them:

(*f*) by implied surrender:

(*g*) by forfeiture; that is to say, (1) in case the lessee breaks an express condition which provides that, on breach thereof, the lessor may re-enter, or the lease shall become void; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself; and in either case the lessor or his transferee does some act showing his intention to determine the lease:

(*h*) on the expiration of a notice to determine the lease, or to quit, or of intention to quit, the property leased, duly given by one party to the other.

Illustration to clause (f).

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

Waiver of forfeiture.

112. A forfeiture under section one hundred and eleven, clause (*g*), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting:

Provided that the lessor is aware that the forfeiture has been incurred:

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

Waiver of notice to quit.

113. A notice given under section one hundred and eleven, clause (*h*), is waived, with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations.

(*a*.) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires. B tenders, and A accepts, rent

rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(*b.*) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires, and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

Relief against forfeiture for non-payment of rent.

114. Where a lease of immoveable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

Effect of surrender and forfeiture on under-leases.

115. The surrender, express or implied, of a lease of immoveable property does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease; but, unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on, the under-lessee shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section one hundred and fourteen.

Effect of holding over.

116. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month, according to the purpose for which

which the property is leased, as specified in section one hundred and six.

Illustrations.

(*a.*) A lets a house to B for five years. B underlets the house to C at a monthly rent of Rs. 100. The five years expire, but C continues in possession of the house and pays the rent to A. C's lease is renewed from month to month.

(*b.*) A lets a farm to B for the life of C. C dies, but B continues in possession with A's assent. B's lease is renewed from year to year.

Exemption of leases for agricultural purposes.

117. None of the provisions of this chapter apply to leases for agricultural purposes, except in so far as the Local Government, with the previous sanction of the Governor General in Council, may by notification published in the local official Gazette declare all or any of such provisions to be so applicable, together with, or subject to, those of the local law, if any, for the time being in force.

Such notification shall not take effect until the expiry of six months from the date of its publication.

CHAPTER VI.

OF EXCHANGES.

"Exchange" defined.

118. When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an "exchange."

A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale.

Right of party deprived of thing received in exchange.

119. In the absence of a contract to the contrary, the party deprived of the thing or part thereof he has received in exchange, by reason of any defect in the title of the other party, is entitled at his option to compensation or to the return of the thing transferred by him.

Rights and liabilities of parties.

120. Save as otherwise provided in this chapter, each party has the rights and is subject to the liabilities of a seller as to that which he gives, and has the rights

rights and is subject to the liabilities of a buyer as to that which he takes.

121. On an exchange of money, each party thereby warrants the genuineness of the money given by him. Exchange of money.

CHAPTER VII.

Of Gifts.

122. "Gift" is the transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee, and accepted by or on behalf of the donee. "Gift" defined.

Such acceptance must be made during the lifetime of the donor and while he is still capable of giving. Acceptance when to be made.

If the donee dies before acceptance, the gift is void.

123. For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses. Transfer how effected.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sold may be delivered.

124. A gift comprising both existing and future property is void as to the latter. Gift of existing and future property.

125. A gift of a thing to two or more donees, of whom one does not accept it, is void as to the interest which he would have taken had he accepted. Gift to several, of whom one does not accept.

126. The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall When gift may be suspended or revoked.

shall be revocable wholly or in part at the mere will of the donor is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.

Illustrations.

(*a.*) A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

(*b.*) A gives a lákh of rupees to B, reserving to himself, with B's assent, the right to take back at pleasure Rs. 10,000 out of the lákh. The gift holds good as to Rs. 90,000, but is void as to Rs. 10,000, which continue to belong to A.

Onerous gifts.

127. Where a gift is in the form of a single transfer to the same person of several things of which one is, and the others are not, burdened by an obligation, the donee can take nothing by the gift unless he accepts it fully.

Where a gift is in the form of two or more separate and independent transfers to the same person of several things, the donee is at liberty to accept one of them and refuse the others, although the former may be beneficial and the latter onerous.

Onerous gift to disqualified person.

A donee not competent to contract and accepting property burdened by any obligation is not bound by his acceptance. But if, after becoming competent to contract and being aware of the obligation, he retains the property given, he becomes so bound.

Illustrations.

(*a.*) A has shares in X, a prosperous joint stock company, and also shares in Y, a joint stock company in difficulties. Heavy calls are expected in respect of the shares in Y. A gives B all his shares in joint stock companies. B refuses to accept the shares in Y. He cannot take the shares in X.

(*b.*) A, having

(*b.*) A, having a lease for a term of years of a house at a rent which he and his representatives are bound to pay during the term, and which is more than the house can be let for, gives to B the lease, and also, as a separate and independent transaction, a sum of money. B refuses to accept the lease. He does not by this refusal forfeit the money.

Universal donee.

128. Subject to the provisions of section one hundred and twenty-seven, where a gift consists of the donor's whole property, the donee is personally liable for all the debts due by the donor at the time of the gift to the extent of the property comprised therein.

Saving of donations *mortis causâ* and Muhammadan law.

129. Nothing in this chapter relates to gifts of moveable property made in contemplation of death, or shall be deemed to affect any rule of Muhammadan law, or, save as provided by section one hundred and twenty-three, any rule of Hindú or Buddhist law.

CHAPTER VIII.

Of Transfers of Actionable Claims.

Actionable claim.

130. A claim which the civil Courts recognise as affording grounds for relief is actionable whether a suit for its enforcement is or is not actually pending or likely to become necessary.

Transfer of debts.

131. No transfer of any debt or any beneficial interest in moveable property shall have any operation against the debtor or against the person in whom the property is vested, until express notice of the transfer is given to him, unless he is a party to or otherwise aware of such transfer; and every dealing by such debtor or person, not being a party to or otherwise aware of, and not having received express notice of, a transfer, with the debt or property shall be valid as against such transfer.

Illustration.

A owes money to B, who transfers the debt to C. B then demands the debt from A, who, having no notice of the transfer, pays B. The payment is valid, and C cannot sue A for the debt.

132. Every

Notice to be in writing signed.

132. Every such notice must be in writing signed by the person making the transfer, or by his agent duly authorized in this behalf.

Debtor to give effect to transfer.

133. On receiving such notice, the debtor or person in whom the property is vested shall give effect to the transfer unless where the debtor resides, or the property is situate, in a foreign country and the title of the person in whose favour the transfer is made is not complete according to the law of such country.

Warranty of solvency of debtor.

134. Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

Discharge of person against whom claim is sold.

135. Where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it.

Nothing in the former part of this section applies—

(*a*) where the sale is made to the co-heir to, or co-proprietor of, the claim sold;

(*b*) where it is made to a creditor in payment of what is due to him;

(*c*) where it is made to the possessor of a property subject to the actionable claim;

(*d*) where the judgment of a competent Court has been delivered affirming the claim, or where the claim has been made clear by evidence and is ready for judgment.

Incapacity of officers connected with Courts of justice.

136. No judge, pleader, mukhtár, clerk, bailiff or other officer connected with Courts of justice can buy any actionable claim falling under the jurisdiction of the Court in which he exercises his functions.

Liability of transferee of debt.

137. The person to whom a debt or charge is transferred shall take it subject to all the liabilities to which

which the transferor was subject in respect thereof at the date of the transfer.

Illustration.

A debenture is issued in fraud of a public company to A. A sells and transfers the debenture to B, who has no notice of the fraud. The debenture is invalid in the hands of B.

138. When a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if recovered by either the transferor or transferee, is applicable, first, in payment of the costs of such recovery; secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor. Mortgaged debt.

139. Nothing in this chapter applies to negotiable instruments. Saving of negotiable instruments.

THE SCHEDULE.

(*a.*) Statutes.

Year and chapter.	Subject.	Extent of repeal.
27 Hen. VIII, c. 10.	Uses	The whole.
13 Eliz., c. 5 ...	Fraudulent conveyances ...	The whole.
27 Eliz., c. 4 ...	Fraudulent conveyances ...	The whole.
4 Wm. & Mary, c. 16.	Clandestine mortgages ...	The whole.

(*b.*) Acts

(*b.*) ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Subject.	Extent of repeal.
IX of 1842 ...	Lease and release ...	The whole.
XXXI of 1854 ...	Modes of conveying land...	Section 17.
XI of 1855 ...	Mesne profits and improvements.	Section 1; in the title, the words "to mesne profits and", and in the preamble "to limit the liability for mesne profits and".
XXVII of 1866	Indian Trustee Act ...	Section 31.
IV of 1872 ...	Panjáb Laws Act ...	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XX of 1875 ...	Central Provinces Laws Act.	So far as it relates to Bengal Regulations I of 1798 and XVII of 1806.
XVIII of 1876...	Oudh Laws Act ...	So far as it relates to Bengal Regulation XVII of 1806.
I of 1877 ...	Specific Relief ...	In sections 35 and 36, the words "in writing."

(*c.*) REGULATIONS

(*c.*) REGULATIONS.

Number and year.	Subject.	Extent of repeal.
Bengal Regulation I of 1798.	Conditional sales ...	The whole Regulation.
Bengal Regulation XVII of 1806.	Redemption ...	The whole Regulation.
Bombay Regulation V of 1827.	Acknowledgment of debts: Interest: Mortgagees in possession.	Section 15.

Government Central Press.—No. 692 L. D.—18-3-82.—4,100.

THE INDIAN EASEMENTS ACT, 1882.

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ACT No. V OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th February, 1882.)

An Act to define and amend the law relating to Easements and Licenses.

WHEREAS it is expedient to define and amend the law relating to Easements and Licenses; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be called "The Indian Easements Act, 1882": Short title.

It extends to the territories respectively administered by the Governor of Madras in Council and the Chief Commissioners of the Central Provinces and Coorg; Local extent.

and it shall come into force on the first day of July, 1882. Commencement.

2. Nothing herein contained shall be deemed to affect any law not hereby expressly repealed; or to derogate from— Savings.

(*a*) any right of the Government to regulate the collection, retention and distribution of the water of rivers and streams flowing in natural channels, and of natural lakes and ponds, or of the water flowing, collected, retained or distributed in or by any channel or other work constructed at the public expense for irrigation;

(*b*) any customary or other right (not being a license) in or over immoveable property which the Government, the public or any person may possess irrespective of other immoveable property; or

(*c*) any

(*c*) any right acquired, or arising out of a relation created, before this Act comes into force.

Repeal of Act XV of 1877, sections 26 and 27.

3. Sections 26 and 27 of the Indian Limitation Act, 1877, and the definition of "easement" contained in that Act, are repealed in the territories to which this Act extends. All references in any Act or Regulation to the said sections, or to sections 27 and 28 of Act No. IX of 1871, shall, in such territories, be read as made to sections fifteen and sixteen of this Act.

CHAPTER I.—OF EASEMENTS GENERALLY.

"Easement defined.

4. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.

Dominant and servient heritages and owners.

The land for the beneficial enjoyment of which the right exists is called the dominant heritage, and the owner or occupier thereof the dominant owner; the land on which the liability is imposed is called the servient heritage, and the owner or occupier thereof the servient owner.

Explanation.—In the first and second clauses of this section, the expression "land" includes also things permanently attached to the earth: the expression "beneficial enjoyment" includes also possible convenience, remote advantage, and even a mere amenity; and the expression "to do something" includes removal and appropriation by the dominant owner, for the beneficial enjoyment of the dominant heritage, of any part of the soil of the servient heritage or anything growing or subsisting thereon.

Illustrations.

(*a*) A, as the owner of a certain house, has a right of way thither over his neighbour B's land for purposes connected with the beneficial enjoyment of the house. This is an easement.

(*b*) A, as the owner of a certain house, has the right to go on his neighbour B's land, and to take water for the purposes of his household out of a spring therein. This is an easement.

(*c*) A, as

(*c*) A, as the owner of a certain house, has the right to conduct water from B's stream to supply the fountains in the garden attached to the house. This is an easement.

(*d*) A, as the owner of a certain house and farm, has the right to graze a certain number of his own cattle on B's field, or to take, for the purpose of being used in the house, by himself, his family, guests, lodgers and servants, water or fish out of C's tank, or timber out of D's wood, or to use, for the purpose of manuring his land, the leaves which have fallen from the trees on E's land. These are easements.

(*e*) A dedicates to the public the right to occupy the surface of certain land for the purpose of passing and re-passing. This right is not an easement.

(*f*) A is bound to cleanse a watercourse running through his land and keep it free from obstruction for the benefit of B, a lower riparian owner. This is not an easement.

Continuous and discontinuous, apparent and non-apparent, easements.

5. Easements are either continuous or discontinuous, apparent or non-apparent.

A continuous easement is one whose enjoyment is, or may be, continual without the act of man.

A discontinuous easement is one that needs the act of man for its enjoyment.

An apparent easement is one the existence of which is shown by some permanent sign which, upon careful inspection by a competent person, would be visible to him.

A non-apparent easement is one that has no such sign.

Illustrations.

(*a*) A right annexed to B's house to receive light by the windows without obstruction by his neighbour A. This is a continuous easement.

(*b*) A right of way annexed to A's house over B's land. This is a discontinuous easement.

(*c*) Rights annexed to A's land to lead water thither across B's land by an aqueduct and to draw off water thence by a drain. The drain would be discovered upon careful inspection by a person conversant with such matters. These are apparent easements.

(*d*) A right annexed to A's house to prevent B from building on his own land. This is a non-apparent easement.

6. An

Easement for limited time or on condition.

6. An easement may be permanent, or for a term of years or other limited period, or subject to periodical interruption, or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose, or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act.

Easements restrictive of certain rights.

7. Easements are restrictions of one or other of the following rights (namely) :—

Exclusive right to enjoy.

(*a*) The exclusive right of every owner of immoveable property (subject to any law for the time being in force) to enjoy and dispose of the same and all products thereof and accessions thereto.

Rights to advantages arising from situation.

(*b*) The right of every owner of immoveable property (subject to any law for the time being in force) to enjoy without disturbance by another the natural advantages arising from its situation.

Illustrations of the Rights above referred to.

(*a*) The exclusive right of every owner of land in a town to build on such land, subject to any municipal law for the time being in force.

(*b*) The right of every owner of land that the air passing thereto shall not be unreasonably polluted by other persons.

(*c*) The right of every owner of a house that his physical comfort shall not be interfered with materially and unreasonably by noise or vibration caused by any other person.

(*d*) The right of every owner of land to so much light and air as pass vertically thereto.

(*e*) The right of every owner of land that such land, in its natural condition, shall have the support naturally rendered by the subjacent and adjacent soil of another person.

Explanation.—Land is in its natural condition when it is not excavated and not subjected to artificial pressure; and the "subjacent and adjacent soil" mentioned in this illustration means such soil only as in its natural condition would support the dominant heritage in its natural condition.

(*f*) The right of every owner of land that, within his own limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

(*g*) The

(*g*) The right of every owner of land to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel.

(*h*) The right of every owner of land that the water of every natural stream which passes by, through or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner's limits without material alteration in quantity or temperature.

(*i*) The right of every owner of upper land that water naturally rising in, or falling on, such land, and not passing in defined channels, shall be allowed by the owner of adjacent lower land to run naturally thereto.

(*j*) The right of every owner of land abutting on a natural stream, lake or pond to use and consume its water for drinking, household purposes and watering his cattle and sheep; and the right of every such owner to use and consume the water for irrigating such land, and for the purposes of any manufactory situate thereon, provided that he does not thereby cause material injury to other like owners.

Explanation.—A natural stream is a stream, whether permanent or intermittent, tidal or tideless, on the surface of land or underground, which flows by the operation of nature only and in a natural and known course.

CHAPTER II.—The Imposition, Acquisition and Transfer of Easements.

Who may impose easements.

8. An easement may be imposed by any one in the circumstances, and to the extent, in and to which he may transfer his interest in the heritage on which the liability is to be imposed.

Illustrations.

(*a*) A is tenant of B's land under a lease for an unexpired term of twenty years, and has power to transfer his interest under the lease. A may impose an easement on the land to continue during the time that the lease exists or for any shorter period.

(*b*) A is

(*b*) A is tenant for his life of certain land with remainder to B absolutely. A cannot, unless with B's consent, impose an easement thereon which will continue after the determination of his life-interest.

(*c*) A, B and C are co-owners of certain land. A cannot, without the consent of B and C, impose an easement on the land or on any part thereof.

(*d*) A and B are lessees of the same lessor, A of a field X for a term of five years, and B of a field Y for a term of ten years. A's interest under his lease is transferable; B's is not. A may impose on X, in favour of B, a right of way terminable with A's lease.

Servient owners.

9. Subject to the provisions of section eight, a servient owner may impose on the servient heritage any easement that does not lessen the utility of the existing easement. But he cannot, without the consent of the dominant owner, impose an easement on the servient heritage which would lessen such utility.

Illustrations.

(*a*) A has, in respect of his mill, a right to the uninterrupted flow thereto, from sunrise to noon, of the water of B's stream. B may grant to C the right to divert the water of the stream from noon to sunset: provided that A's supply is not thereby diminished.

(*b*) A has, in respect of his house, a right of way over B's land. B may grant to C, as the owner of a neighbouring farm, the right to feed his cattle on the grass growing on the way: provided that A's right of way is not thereby obstructed.

Lessor and mortgagor.

10. Subject to the provisions of section eight, a lessor may impose, on the property leased, any easement that does not derogate from the rights of the lessee as such, and a mortgagor may impose, on the property mortgaged, any easement that does not render the security insufficient. But a lessor or mortgagor cannot, without the consent of the lessee or mortgagee, impose any other easement on such property, unless it be to take effect on the termination of the lease or the redemption of the mortgage.

Explanation.—A security is insufficient within the meaning of this section unless the value of the mortgaged property exceeds by one-third, or, if consisting of

of buildings, exceeds by one-half, the amount for the time being due on the mortgage.

11. No lessee or other person having a derivative interest may impose on the property held by him as such an easement to take effect after the expiration of his own interest, or in derogation of the right of the lessor or the superior proprietor. Lessee.

12. An easement may be acquired by the owner of the immoveable property for the beneficial enjoyment of which the right is created, or on his behalf, by any person in possession of the same. Who may acquire easements.

One of two or more co-owners of immoveable property may, as such, with or without the consent of the other or others, acquire an easement for the beneficial enjoyment of such property.

No lessee of immoveable property can acquire, for the beneficial enjoyment of other immoveable property of his own, an easement in or over the property comprised in his lease.

13. Where one person transfers or bequeaths immoveable property to another,— Easements of necessity and *quasi* easements.

(*a*) if an easement in other immoveable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement; or

(*b*) if such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement;

(*c*) if an easement in the subject of the transfer or bequest is necessary for enjoying other immoveable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(*d*) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect,

the

the transferor, or the legal representative of the testator, shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,—

(*e*) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(*f*) if such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (*a*), (*c*) and (*e*), are called easements of necessity.

Where immoveable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.

Illustrations.

(*a*) A sells B a field then used for agricultural purposes only. It is inaccessible except by passing over A's adjoining land or by trespassing on the land of a stranger. B is entitled to a right of way, for agricultural purposes only, over A's adjoining land to the field sold.

(*b*) A, the owner of two fields, sells one to B, and retains the other. The field retained was at the date of the sale used for agricultural purposes only and is inaccessible except by passing over the field sold to B. A is entitled to a right of way, for agricultural purposes only, over B's field to the field retained.

(*c*) A sells B a house with windows overlooking A's land, which A retains. The light which passes over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. B is entitled to the light, and A cannot afterwards obstruct it by building on his land.

(*d*) A sells B a house with windows overlooking A's land. The light passing over A's land to the windows is necessary for enjoying the house as it was enjoyed when the sale took effect. Afterwards A sells the land to C. Here C cannot obstruct the light by building on the land, for he takes it subject to the burdens to which it was subject in A's hands.

(*e*) A is

(*e*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A simultaneously sells the house to B and the land to C. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. Here A impliedly grants B a right to the light, and C takes the land subject to the restriction that he may not build so as to obstruct such light.

(*f*) A is the owner of a house and adjoining land. The house has windows overlooking the land. A, retaining the house, sells the land to B, without expressly reserving any easement. The light passing over the land is necessary for enjoying the house as it was enjoyed when the sale took effect. A is entitled to the light, and B cannot build on the land so as to obstruct such light.

(*g*) A, the owner of a house, sells B a factory built on adjoining land. B is entitled, as against A, to pollute the air, when necessary, with smoke and vapours from the factory.

(*h*) A, the owner of two adjoining houses, Y and Z, sells Y to B, and retains Z. B is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Y as it was enjoyed when the sale took effect, and A is entitled to the benefit of all the gutters and drains common to the two houses and necessary for enjoying Z as it was enjoyed when the sale took effect.

(*i*) A, the owner of two adjoining buildings, sells one to B, retaining the other. B is entitled to a right to lateral support from A's building, and A is entitled to a right to lateral support from B's building.

(*j*) A, the owner of two adjoining buildings, sells one to B, and the other to C. C is entitled to lateral support from B's building, and B is entitled to lateral support from C's building.

(*k*) A grants lands to B for the purpose of building a house thereon. B is entitled to such amount of lateral and subjacent support from A's land as is necessary for the safety of the house.

(*l*) Under the Land Acquisition Act, 1870, a Railway Company compulsorily acquires a portion of B's land for the purpose of making a siding. The Company is entitled to such amount of lateral support from B's adjoining land as is essential for the safety of the siding.

(*m*) Owing to the partition of joint property, A becomes the owner of an upper room in a building, and B becomes the owner of the portion of the building immediately beneath it. A is entitled to such amount of vertical support from B's portion as is essential for the safety of the upper room.

(*n*) A lets a house and grounds to B for a particular business. B has no access to them other than by crossing A's land. B is entitled

entitled to a right of way over that land suitable to the business to be carried on by B in the house and grounds.

Direction of way of necessity.

14. When right to a way of necessity is created under section thirteen, the transferor, the legal representative of the testator, or the owner of the share over which the right is exercised, as the case may be, is entitled to set out the way; but it must be reasonably convenient for the dominant owner.

When the person so entitled to set out the way refuses or neglects to do so, the dominant owner may set it out.

Acquisition by prescription.

15. Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years,

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure, or by things affixed thereto, as an easement, without interruption, and for twenty years,

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years,

the right to such access and use of light or air, support or other easement shall be absolute.

Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to Government this section shall be read as if, for the words "twenty years", the words "sixty years" were substituted.

Illustrations.

(*a*) A suit is brought in 1883 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption, from 1st January, 1862, to 1st January, 1882. The plaintiff is entitled to judgment.

(*b*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that for a year of that time the plaintiff was entitled to possession of the servient heritage as lessee thereof and enjoyed the right as such lessee. The suit shall be dismissed, for the right of way has not been enjoyed "as an easement" for twenty years.

(*c*) In a like suit the plaintiff shows that the right was peaceably and openly enjoyed by him for twenty years. The defendant proves that the plaintiff on one occasion during the twenty years had admitted that the user was not of right and asked his leave to enjoy the right. The suit shall be dismissed, for the right of way has not been enjoyed "as of right" for twenty years.

16. Provided

Exclusion in favour of reversioner of servient heritage.

16. Provided that, when any land upon, over or from which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or any term of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the said last-mentioned period of twenty years, in case the claim is, within three years next after the determination of such interest or term, resisted by the person entitled, on such determination, to the said land.

Illustration.

A sues for a declaration that he is entitled to a right of way over B's land. A proves that he has enjoyed the right for twenty-five years; but B shows that during ten of these years C had a life-interest in the land; that on C's death B became entitled to the land; and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A, with reference to the provisions of this section, has only proved enjoyment for fifteen years.

Rights which cannot be acquired by prescription.

17. Easements acquired under section fifteen are said to be acquired by prescription, and are called prescriptive rights.

None of the following rights can be so acquired:—

(*a*) a right which would tend to the total destruction of the subject of the right, or the property on which, if the acquisition were made, liability would be imposed;

(*b*) a right to the free passage of light or air to an open space of ground;

(*c*) a right to surface-water not flowing in a stream and not permanently collected in a pool, tank or otherwise;

(*d*) a right to underground water not passing in a defined channel.

Customary easements.

18. An easement may be acquired in virtue of a local custom. Such easements are called customary easements.

Illustrations.

(*a*) By the custom of a certain village every cultivator of village land is entitled, as such, to graze his cattle on the common pasture.

pasture. A having become the tenant of a plot of uncultivated land in the village breaks up and cultivates that plot. He thereby acquires an easement to graze his cattle in accordance with the custom.

(*b*) By the custom of a certain town no owner or occupier of a house can open a new window therein so as substantially to invade his neighbour's privacy. A builds a house in the town near B's house. A thereupon acquires an easement that B shall not open new windows in his house so as to command a view of the portions of A's house which are ordinarily excluded from observation, and B acquires a like easement with respect to A's house.

Transfer of dominant heritage passes easement.

19. Where the dominant heritage is transferred or devolves, by act of parties or by operation of law, the transfer or devolution shall, unless a contrary intention appears, be deemed to pass the easement to the person in whose favour the transfer or devolution takes place.

Illustration.

A has certain land to which a right of way is annexed. A lets the land to B for twenty years. The right of way vests in B and his legal representative so long as the lease continues.

CHAPTER III.—The Incidents of Easements.

Rules controlled by contract or title.

20. The rules contained in this chapter are controlled by any contract between the dominant and servient owners relating to the servient heritage, and by the provisions of the instrument or decree, if any, by which the easement referred to was imposed.

Incidents of customary easements.

And when any incident of any customary easement is inconsistent with such rules, nothing in this chapter shall affect such incident.

Bar to use unconnected with enjoyment.

21. An easement must not be used for any purpose not connected with the enjoyment of the dominant heritage.

Illustrations.

(*a*) A, as owner of a farm Y, has a right of way over B's land to Y. Lying beyond Y, A has another farm Z, the beneficial enjoyment of which is not necessary for the beneficial enjoyment of Y. He must not use the easement for the purpose of passing to and from Z.

(*b*) A, as

(*b*) A, as owner of a certain house, has a right of way to and from it. For the purpose of passing to and from the house, the right may be used, not only by A, but by the members of his family, his guests, lodgers, servants, workmen, visitors and customers; for this is a purpose connected with the enjoyment of the dominant heritage. So, if A lets the house, he may use the right of way for the purpose of collecting the rent and seeing that the house is kept in repair.

Exercise of easement.

Confinement of exercise of easement.

22. The dominant owner must exercise his right in the mode which is least onerous to the servient owner; and when the exercise of an easement can without detriment to the dominant owner be confined to a determinate part of the servient heritage, such exercise shall, at the request of the servient owner, be so confined.

Illustrations.

(*a*) A has a right of way over B's field. A must enter the way at either end and not at any intermediate point.

(*b*) A has a right annexed to his house to cut thatching-grass in B's swamp. A, when exercising his easement, must cut the grass so that the plants may not be destroyed.

Right to alter mode of enjoyment.

23. Subject to the provisions of section twenty-two, the dominant owner may, from time to time, alter the mode and place of enjoying the easement, provided that he does not thereby impose any additional burden on the servient heritage.

Exception.—The dominant owner of a right of way cannot vary his line of passage at pleasure, even though he does not thereby impose any additional burden on the servient heritage.

Illustrations.

(*a*) A, the owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water.

(*b*) A has a right to discharge on B's land the rain-water from the eaves of A's house. This does not entitle A to advance his eaves if, by so doing, he imposes a greater burden on B's land.

(*c*) A, as the owner of a paper-mill, acquires a right to pollute a stream by pouring in the refuse-liquor produced by making in the mill paper from rags. He may pollute the stream

stream by pouring in similar liquor produced by making in the mill paper by a new process from bamboos, provided that he does not substantially increase the amount, or injuriously change the nature, of the pollution.

(*d*) A, a riparian owner, acquires, as against the lower riparian owners, a prescriptive right to pollute a stream by throwing sawdust into it. This does not entitle A to pollute the stream by discharging into it poisonous liquor.

Right to do acts to secure enjoyment.

24. The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full enjoyment of the easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage.

Accessory rights.

Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights.

Illustrations.

(*a*) A has an easement to lay pipes in B's land to convey water to A's cistern. A may enter and dig the land in order to mend the pipes, but he must restore the surface to its original state.

(*b*) A has an easement of a drain through B's land. The sewer with which the drain communicates is altered. A may enter upon B's land and alter the drain, to adapt it to the new sewer, provided that he does not thereby impose any additional burden on B's land.

(*c*) A, as owner of a certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(*d*) A, as owner of a certain field, has a right of way over B's land. B renders the way impassable. A may deviate from the way and pass over the adjoining land of B, provided that the deviation is reasonable.

(*e*) A, as owner of a certain house, has a right of way over B's field. A may remove rocks to make the way.

(*f*) A has an easement of support from B's wall. The wall gives way. A may enter upon B's land and repair the wall.

(*g*) A has an easement to have his land flooded by means of

of a dam in B's stream. The dam is half swept away by an inundation. A may enter upon B's land and repair the dam.

Liability for expenses necessary for preservation of easement.

25. The expenses incurred in constructing works, or making repairs, or doing any other act necessary for the use or preservation of an easement, must be defrayed by the dominant owner.

Liability for damage from want of repair.

26. Where an easement is enjoyed by means of an artificial work, the dominant owner is liable to make compensation for any damage to the servient heritage arising from the want of repair of such work.

Servient owner not bound to do anything.

27. The servient owner is not bound to do anything for the benefit of the dominant heritage, and he is entitled, as against the dominant owner, to use the servient heritage in any way consistent with the enjoyment of the easement: but he must not do any act tending to restrict the easement or to render its exercise less convenient.

Illustrations.

(*a*) A, as owner of a house, has a right to lead water and send sewage through B's land. B is not bound as servient owner to clear the watercourse or scour the sewer.

(*b*) A grants a right of way through his land to B as owner of a field. A may feed his cattle on grass growing on the way, provided that B's right of way is not thereby obstructed; but he must not build a wall at the end of his land so as to prevent B from going beyond it, nor must he narrow the way so as to render the exercise of the right less easy than it was at the date of the grant.

(*c*) A, in respect of his house, is entitled to an easement of support from B's wall. B is not bound as servient owner to keep the wall standing and in repair. But he must not pull down or weaken the wall so as to make it incapable of rendering the necessary support.

(*d*) A, in respect of his mill, is entitled to a watercourse through B's land. B must not drive stakes so as to obstruct the watercourse.

(*e*) A, in respect of his house, is entitled to a certain quantity of light passing over B's land. B must not plant trees so as to obstruct the passage to A's windows of that quantity of light.

Extent of easements.

28. With respect to the extent of easements and the

the mode of their enjoyment, the following provisions shall take effect:—

An easement of necessity is co-extensive with the necessity as it existed when the easement was imposed. Easement of necessity.

The extent of any other easement and the mode of its enjoyment must be fixed with reference to the probable intention of the parties, and the purpose for which the right was imposed or acquired. Other easements.

In the absence of evidence as to such intention and purpose—

(*a*) a right of way of any one kind does not include a right of way of any other kind: Right of way.

(*b*) the extent of a right to the passage of light or air to a certain window, door or other opening, imposed by a testamentary or non-testamentary instrument, is the quantity of light or air that entered the opening at the time the testator died or the non-testamentary instrument was made: Right to light or air acquired by grant.

(*c*) the extent of a prescriptive right to the passage of light or air to a certain window, door or other opening is that quantity of light or air which has been accustomed to enter that opening during the whole of the prescriptive period irrespectively of the purposes for which it has been used: Prescriptive right to light or air.

(*d*) the extent of a prescriptive right to pollute air or water is the extent of the pollution at the commencement of the period of user on completion of which the right arose: and Prescriptive right to pollute air and water.

(*e*) the extent of every other prescriptive right and the mode of its enjoyment must be determined by the accustomed user of the right. Other prescriptive rights.

29. The dominant owner cannot, by merely altering or adding to the dominant heritage, substantially increase an easement. Increase of easement.

Where an easement has been granted or bequeathed so that its extent shall be proportionate to the extent of the dominant heritage, if the dominant heritage is increased by alluvion, the easement is proportionately

portionately increased, and if the dominant heritage is diminished by diluvion, the easement is proportionately diminished.

Save as aforesaid, no easement is affected by any change in the extent of the dominant or the servient heritage.

Illustrations.

(*a*) A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water.

(*b*) A has acquired an easement to pollute a stream by carrying on a manufacture on its banks by which a certain quantity of foul matter is discharged into it. A extends his works and thereby increases the quantity discharged. He is responsible to the lower riparian owners for injury done by such increase.

(*c*) A, as the owner of a farm, has a right to take, for the purpose of manuring his farm, leaves which have fallen from the trees on B's land. A buys a field and unites it to his farm. A is not thereby entitled to take leaves to manure this field.

Partition of dominant heritage.

30. Where a dominant heritage is divided between two or more persons, the easement becomes annexed to each of the shares, but not so as to increase substantially the burden on the servient heritage: provided that such annexation is consistent with the terms of the instrument, decree or revenue proceeding (if any) under which the division was made, and in the case of prescriptive rights, with the user during the prescriptive period.

Illustrations.

(*a*) A house to which a right of way by a particular path is annexed is divided into two parts, one of which is granted to A, the other to B. Each is entitled, in respect of his part, to a right of way by the same path.

(*b*) A house to which is annexed the right of drawing water from a well to the extent of fifty buckets a day is divided into two distinct heritages, one of which is granted to A, the other to B. A and B are each entitled, in respect of his heritage, to draw from the well fifty buckets a day; but the amount drawn by both must not exceed fifty buckets a day.

(*c*) A, having in respect of his house an easement of light, divides the house into three distinct heritages. Each of these continues to have the right to have its windows unobstructed.

31. In

31. In the case of excessive user of an easement the servient owner may, without prejudice to any other remedies to which he may be entitled, obstruct the user, but only on the servient heritage: provided that such user cannot be obstructed when the obstruction would interfere with the lawful enjoyment of the easement.

Obstruction in case of excessive user.

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Illustration.

A, having a right to the free passage over B's land of light to four windows six feet by four, increases their size and number. It is impossible to obstruct the passage of light to the new windows without also obstructing the passage of light to the ancient windows. B cannot obstruct the excessive user.

CHAPTER IV.

THE DISTURBANCE OF EASEMENTS.

32. The owner or occupier of the dominant heritage is entitled to enjoy the easement without disturbance by any other person.

Right to enjoyment without disturbance.

Illustration.

A, as owner of a house, has a right of way over B's land. C unlawfully enters on B's land, and obstructs A in his right of way. A may sue C for compensation, not for the entry, but for the obstruction.

33. The owner of any interest in the dominant heritage, or the occupier of such heritage, may institute a suit for compensation for the disturbance of the easement or of any right accessory thereto; provided that the disturbance has actually caused substantial damage to the plaintiff.

Suit for disturbance of easement.

Explanation I.—The doing of any act likely to injure the plaintiff by affecting the evidence of the easement, or by materially diminishing the value of the dominant heritage, is substantial damage within the meaning of this section and section thirty-four.

Explanation II.—Where the easement disturbed is a right to the free passage of light passing to the openings in a house, no damage is substantial within the meaning of this section unless it falls within the

first

first Explanation, or interferes materially with the physical comfort of the plaintiff, or prevents him from carrying on his accustomed business in the dominant heritage as beneficially as he had done previous to instituting the suit.

Explanation III.—Where the easement disturbed is a right to the free passage of air to the openings in a house, damage is substantial within the meaning of this section if it interferes materially with the physical comfort of the plaintiff, though it is not injurious to his health.

Illustrations.

(*a*) A places a permanent obstruction in a path over which B, as tenant of C's house, has a right of way. This is substantial damage to C, for it may affect the evidence of his reversionary right to the easement.

(*b*) A, as owner of a house, has a right to walk along one side of B's house. B builds a verandah overhanging the way about ten feet from the ground, and so as not to occasion any inconvenience to foot-passengers using the way. This is not substantial damage to A.

When cause of action arises for removal of support.

34. The removal of the means of support to which a dominant owner is entitled does not give rise to a right to recover compensation unless and until substantial damage is actually sustained.

Injunction to restrain disturbance.

35. Subject to the provisions of the Specific Relief Act, 1877, sections 52 to 57 (both inclusive), an injunction may be granted to restrain the disturbance of an easement—

(*a*) if the easement is actually disturbed,—when compensation for such disturbance might be recovered under this chapter :

(*b*) if the disturbance is only threatened or intended,—when the act threatened or intended must necessarily, if performed, disturb the easement.

Abatement of obstruction of easement.

36. Notwithstanding the provisions of section twenty-four, the dominant owner cannot himself abate a wrongful obstruction of an easement.

CHAPTER V

CHAPTER V.—THE EXTINCTION, SUSPENSION AND REVIVAL OF EASEMENTS.

Extinction by dissolution of right of servient owner.

37. When, from a cause which preceded the imposition of an easement, the person by whom it was imposed ceases to have any right in the servient heritage, the easement is extinguished.

Exception.—Nothing in this section applies to an easement lawfully imposed by a mortgagor in accordance with section ten.

Illustrations.

(*a*) A transfers Sultánpur to B on condition that he does not marry C. B imposes an easement on Sultánpur. Then B marries C. B's interest in Sultánpur ends, and with it the easement is extinguished.

(*b*) A, in 1860, let Sultánpur to B for thirty years from the date of the lease. B, in 1861, imposes an easement on the land in favour of C, who enjoys the easement peaceably and openly as an easement without interruption for twenty-nine years. B's interest in Sultánpur then ends, and with it C's easement.

(*c*) A and B, tenants of C, have permanent transferable interests in their respective holdings. A imposes on his holding an easement to draw water from a tank for the purpose of irrigating B's land. B enjoys the easement for twenty years. Then A's rent falls into arrear and his interest is sold. B's easement is extinguished.

(*d*) A mortgages Sultánpur to B, and lawfully imposes an easement on the land in favour of C in accordance with the provisions of section ten. The land is sold to D in satisfaction of the mortgage-debt. The easement is not thereby extinguished.

Extinction by release.

38. An easement is extinguished when the dominant owner releases it, expressly or impliedly, to the servient owner.

Such release can be made only in the circumstances and to the extent in and to which the dominant owner can alienate the dominant heritage.

An easement may be released as to part only of the servient heritage.

Explanation I.—An easement is impliedly released—

(*a*) where the dominant owner expressly authorizes an act of a permanent nature to be done on the servient

servient heritage, the necessary consequence of which is to prevent his future enjoyment of the easement, and such act is done in pursuance of such authority;

(*b*) where any permanent alteration is made in the dominant heritage of such a nature as to show that the dominant owner intended to cease to enjoy the easement in future.

Explanation II.—Mere non-user of an easement is not an implied release within the meaning of this section.

Illustrations.

(*a*) A, B and C are co-owners of a house to which an easement is annexed. A, without the consent of B and C, releases the easement. This release is effectual only as against A and his legal representative.

(*b*) A grants B an easement over A's land for the beneficial enjoyment of his house. B assigns the house to C. B then purports to release the easement. The release is ineffectual.

(*c*) A, having the right to discharge his eavesdroppings into B's yard, expressly authorizes B to build over this yard to a height which will interfere with the discharge. B builds accordingly. A's easement is extinguished to the extent of the interference.

(*d*) A, having an easement of light to a window, builds up that window with bricks and mortar so as to manifest an intention to abandon the easement permanently. The easement is impliedly released.

(*e*) A, having a projecting roof by means of which he enjoys an easement to discharge eavesdroppings on B's land permanently alters the roof, so as to direct the rain-water into a different channel and discharge it on C's land. The easement is impliedly released.

Extinction by revocation.

39. An easement is extinguished when the servient owner, in exercise of a power reserved in this behalf, revokes the easement.

Extinction on expiration of limited period or happening of dissolving condition.

40. An easement is extinguished where it has been imposed for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires or the condition is fulfilled.

Extinction on termination of necessity.

41. An easement of necessity is extinguished when the necessity comes to an end.

Illustration.

Illustration.

A grants B a field inaccessible except by passing over A's adjoining land. B afterwards purchases a part of that land over which he can pass to his field. The right of way over A's land which B had acquired is extinguished.

Extinction of useless easement.

42. An easement is extinguished when it becomes incapable of being at any time and under any circumstances beneficial to the dominant owner.

Extinction by permanent change in dominant heritage.

43. Where, by, any permanent change in the dominant heritage, the burden on the servient heritage is materially increased and cannot be reduced by the servient owner without interfering with the lawful enjoyment of the easement, the easement is extinguished, unless—

(*a*) it was intended for the beneficial enjoyment of the dominant heritage, to whatever extent the easement should be used; or

(*b*) the injury caused to the servient owner by the change is so slight that no reasonable person would complain of it; or

(*c*) the easement is an easement of necessity.

Nothing in this section shall be deemed to apply to an easement entitling the dominant owner to support of the dominant heritage.

Extinction on permanent alteration of servient heritage by superior force.

44. An easement is extinguished where the servient heritage is by superior force so permanently altered that the dominant owner can no longer enjoy such easement:

Provided that, where a way of necessity is destroyed by superior force, the dominant owner has a right to another way over the servient heritage; and the provisions of section fourteen apply to such way.

Illustrations.

(*a*) A grants to B, as the owner of a certain house, a right to fish in a river running through A's land. The river changes its course permanently and runs through C's land. B's easement is extinguished.

(*b*) Access to a path over which A has a right of way is permanently cut off by an earthquake. A's right is extinguished.

45. An

Extinction by destruction of either heritage.

45. An easement is extinguished when either the dominant or the servient heritage is completely destroyed.

Illustration.

A has a right of way over a road running along the foot of a sea-cliff. The road is washed away by a permanent encroachment of the sea. A's easement is extinguished.

Extinction by unity of ownership.

46. An easement is extinguished when the same person becomes entitled to the absolute ownership of the whole of the dominant and servient heritages.

Illustrations.

(*a*) A, as the owner of a house, has a right of way over B's field. A mortgages his house, and B mortgages his field to C. Then C forecloses both mortgages and becomes thereby absolute owner of both house and field. The right of way is extinguished.

(*b*) The dominant owner acquires only part of the servient heritage: the easement is not extinguished, except in the case illustrated in section forty-one.

(*c*) The servient owner acquires the dominant heritage in connection with a third person: the easement is not extinguished.

(*d*) The separate owners of two separate dominant heritages jointly acquire the heritage which is servient to the two separate heritages: the easements are not extinguished.

(*e*) The joint owners of the dominant heritage jointly acquire the servient heritage: the easement is extinguished.

(*f*) A single right of way exists over two servient heritages for the beneficial enjoyment of a single dominant heritage. The dominant owner acquires one only of the servient heritages. The easement is not extinguished.

(*g*) A has a right of way over B's road. B dedicates the road to the public. A's right of way is not extinguished.

Extinction by non-enjoyment.

47. A continuous easement is extinguished when it totally ceases to be enjoyed as such for an unbroken period of twenty years.

A discontinuous easement is extinguished when, for a like period, it has not been enjoyed as such.

Such period shall be reckoned, in the case of a continuous easement, from the day on which its enjoyment was obstructed by the servient owner, or rendered impossible

impossible by the dominant owner; and, in the case of a discontinuous easement, from the day on which it was last enjoyed by any person as dominant owner.

Provided that if, in the case of a discontinuous easement, the dominant owner, within such period, registers, under the Indian Registration Act, 1877, a declaration of his intention to retain such easement, it shall not be extinguished until a period of twenty years has elapsed from the date of the registration.

Where an easement can be legally enjoyed only at a certain place, or at certain times, or between certain hours, or for a particular purpose, its enjoyment during the said period at another place, or at other times, or between other hours, or for another purpose, does not prevent its extinction under this section.

The circumstance that, during the said period, no one was in possession of the servient heritage, or that the easement could not be enjoyed, or that a right accessory thereto was enjoyed, or that the dominant owner was not aware of its existence, or that he enjoyed it in ignorance of his right to do so, does not prevent its extinction under this section.

An easement is not extinguished under this section—

(*a*) where the cessation is in pursuance of a contract between the dominant and servient owners;

(*b*) where the dominant heritage is held in co-ownership, and one of the co-owners enjoys the easement within the said period, or

(*c*) where the easement is a necessary easement.

Where several heritages are respectively subject to rights of way for the benefit of a single heritage, and the ways are continuous, such rights shall, for the purposes of this section, be deemed to be a single easement.

Illustration.

A has, as annexed to his house, rights of way from the high road

road thither over the heritages X and Z and the intervening heritage Y. Before the twenty years expire, A exercises his right of way over X. His rights of way over Y and Z are not extinguished.

Extinction of accessory rights.

48. When an easement is extinguished, the rights (if any) accessory thereto are also extinguished.

Illustration.

A has an easement to draw water from B's well. As accessory thereto, he has a right of way over B's land to and from the well. The easement to draw water is extinguished under section forty-seven. The right of way is also extinguished.

Suspension of easement.

49. An easement is suspended when the dominant owner becomes entitled to possession of the servient heritage for a limited interest therein, or when the servient owner becomes entitled to possession of the dominant heritage for a limited interest therein.

Servient owner not entitled to require continuance.

50. The servient owner has no right to require that an easement be continued; and, notwithstanding the provisions of section twenty-six, he is not entitled to compensation for damage caused to the servient heritage in consequence of the extinguishment or suspension of the easement, if the dominant owner has given to the servient owner such notice as will enable him, without unreasonable expense, to protect the servient heritage from such damage.

Compensation for damage caused by extinguishment.

Where such notice has not been given, the servient owner is entitled to compensation for damage caused to the servient heritage in consequence of such extinguishment or suspension.

Illustration.

A, in exercise of an easement, diverts to his canal the water of B's stream. The diversion continues for many years, and during that time the bed of the stream partly fills up. A then abandons his easement, and restores the stream to its ancient course. B's land is consequently flooded. B sues A for compensation for the damage caused by the flooding. It is proved that A gave B a month's notice of his intention to abandon the easement, and that such notice was sufficient to enable B, without unreasonable expense, to have prevented the damage. The suit must be dismissed.

51. An

51. An easement extinguished under section forty-five revives (*a*) when the destroyed heritage is, before twenty years have expired, restored by the deposit of alluvion; (*b*) when the destroyed heritage is a servient building and before twenty years have expired such building is rebuilt upon the same site; and (*c*) when the destroyed heritage is a dominant building and before twenty years have expired such building is rebuilt upon the same site and in such a manner as not to impose a greater burden on the servient heritage. Revival of easements.

An easement extinguished under section forty-six revives when the grant or bequest by which the unity of ownership was produced is set aside by the decree of a competent Court. A necessary easement extinguished under the same section revives when the unity of ownership ceases from any other cause.

A suspended easement revives if the cause of suspension is removed before the right is extinguished under section forty-seven.

Illustration.

A, as the absolute owner of field Y, has a right of way thither over B's field Z. A obtains from B a lease of Z for twenty years. The easement is suspended so long as A remains lessee of Z. But when A assigns the lease to C, or surrenders it to B, the right of way revives.

CHAPTER VI.—LICENSES.

52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immoveable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license. "License" defined.

53. A license may be granted by any one in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the license. Who may grant license.

54. The

Grant may be express or implied.

54. The grant of a license may be express or implied from the conduct of the grantor, and an agreement which purports to create an easement, but is ineffectual for that purpose, may operate to create a license.

Accessory licenses annexed by law.

55. All licenses necessary for the enjoyment of any interest, or the exercise of any right, are implied in the constitution of such interest or right. Such licenses are called accessory licenses.

Illustration.

A sells the trees growing on his land to B. B is entitled to go on the land and take away the trees.

License when transferable.

56. Unless a different intention is expressed or necessarily implied, a license to attend a place of public entertainment may be transferred by the licensee; but, save as aforesaid, a license cannot be transferred by the licensee or exercised by his servants or agents.

Illustrations.

(*a*) A grants B a right to walk over A's field whenever he pleases. The right is not annexed to any immoveable property of B. The right cannot be transferred.

(*b*) The Government grant B a license to erect and use temporary grain-sheds on Government land. In the absence of express provision to the contrary, B's servants may enter on the land for the purpose of erecting sheds, erect the same, deposit grain therein and remove grain therefrom.

Grantor's duty to disclose defects.

57. The grantor of a license is bound to disclose to the licensee any defect in the property affected by the license, likely to be dangerous to the person or property of the licensee, of which the grantor is, and the licensee is not, aware.

Grantor's duty not to render property unsafe.

58. The grantor of a license is bound not to do anything likely to render the property affected by the license dangerous to the person or property of the licensee.

Grantor's transferee not bound by license.

59. When the grantor of the license transfers the property affected thereby, the transferee is not as such bound by the license.

60. A license

60. A license may be revoked by the grantor, unless— License when revocable.

(*a*) it is coupled with a transfer of property and such transfer is in force:

(*b*) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.

61. The revocation of a license may be express or implied. Revocation express or implied.

Illustrations.

(*a*) A, the owner of a field, grants a license to B to use a path across it. A, with intent to revoke the license, locks a gate across the path. The license is revoked.

(*b*) A, the owner of a field, grants a license to B to stack hay on the field. A lets or sells the field to C. The license is revoked.

62. A license is deemed to be revoked— License when deemed revoked.

(*a*) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license:

(*b*) when the licensee releases it, expressly or impliedly, to the grantor or his representative:

(*c*) where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled:

(*d*) where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can no longer exercise his right:

(*e*) where the licensee becomes entitled to the absolute ownership of the property affected by the license:

(*f*) where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable:

(*g*) where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist:

(*h*) where

(*h*) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee:

(*i*) in the case of an accessory license, when the interest or right to which it is accessory ceases to exist.

Licensee's rights on revocation.

63. Where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property.

Licensee's rights on eviction.

64. Where a license has been granted for a consideration, and the licensee, without any fault of his own, is evicted by the grantor before he has fully enjoyed, under the license, the right for which he contracted, he is entitled to recover compensation from the grantor.

Government of India Central Printing Office.—No. 693 L. D.—30-3-82.—4,100.

THE INDIAN COMPANIES ACT, 1882.

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FIRST SCHEDULE.

SECOND SCHEDULE.

ACT No. VI OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 24th February, 1882.)

An Act for the incorporation, regulation and winding-up of Trading Companies and other Associations.

WHEREAS it is expedient to amend the law relating to the incorporation, regulation and winding-up of Trading Companies and other Associations; It is hereby enacted as follows: Preamble.

PRELIMINARY.

1. This Act may be cited as "The Indian Companies Act, 1882": Short title.

it extends to the whole of British India: Local extent.

it shall come into force on the first day of May, 1882; and the time at which it comes into force is hereinafter referred to as the commencement of this Act. Commencement.

2. On and from the commencement of this Act, the Indian Companies Act, 1866, shall be repealed. But such repeal shall not affect— Repeal of Act X of 1866.

(*a*) the incorporation of any Company registered under the said Act or any Act thereby repealed;

(*b*) any right or privilege acquired, or liability incurred, under the said Act or any Act thereby repealed;

(*c*) table B in the schedule annexed to Act No. XIX of 1857 or any part thereof, so far as the same applies to any Company existing at the time of the commencement of this Act.

And

And all references to the said Indian Companies Act, 1866, in Acts or Regulations passed before the commencement of this Act shall be read as if made to this Act; and all rules made, fees directed, resolutions passed and other things duly done under the same Act shall be deemed to be respectively made, directed, passed and done under this Act; and all Companies under the same Act shall be deemed to be Companies under this Act.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"Insurance Company";

"Insurance Company" means a Company that carries on the business of insurance either solely or in common with any other business or businesses;

"Court";

"Court" means the principal civil Court of original jurisdiction in a district, and includes the High Court in the exercise of its ordinary original civil jurisdiction;

"District Court."

"District Court" means the principal civil Court of original jurisdiction in a district, but does not include the High Court in the exercise of its ordinary original civil jurisdiction.

Prohibition of partnerships exceeding certain number.

4. No Company, Association or Partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a Company under this Act, or is formed in pursuance of an Act of Parliament or some other Act of the Governor General in Council, or by Royal Charter or Letters Patent; and no Company, Association or Partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the Company, Association or Partnership, or by the individual members thereof, unless it is registered as a Company under this Act, or is formed in pursuance of some other Act or of Letters Patent.

Division of Act.

5. This Act is divided into nine Parts, relating to the following subject-matters:—

The first Part—to the constitution and incorporation of Companies and Associations under this Act;

The

The second Part—to the distribution of the capital and liability of members of Companies and Associations under this Act;

The third Part—to the management and administration of Companies and Associations under this Act;

The fourth Part—to the winding-up of Companies and Associations under this Act;

The fifth Part—to the registration-office;

The sixth Part—to the application of this Act to Companies registered under Act No. XIX of 1857 *(for the incorporation and regulation of Joint Stock Companies and other Associations, either with or without limited liability of the members thereof)*, and Act No. VII of 1860 *(to enable Joint Stock Banking Companies to be formed on the principle of limited liability)*, or either of them;

The seventh Part—to Companies authorized to register under this Act;

The eighth Part—to the application of this Act to unregistered Companies;

The ninth Part—to miscellaneous provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of Association.

Mode of forming Company.

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, with or without limited liability.

Explanation.—Foreigners are persons within the meaning of this section, although the whole or any part of the business of the proposed Company is intended to be transacted out of British India.

7. The

Mode of limiting liability of members.

7. The liability of the members of a Company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the Company in the event of its being wound up.

Directors with unlimited liability.

Where a Company is formed as a Limited Company, the liability of the directors or managers of such Company, or of the managing director, may, if so provided by the memorandum of association, be unlimited.

Memorandum of association of a Company limited by shares.

8. Where a Company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a Company limited by shares, the memorandum of association shall contain the following things (that is to say) :—

(*a*) the name of the proposed Company with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that the liability of the members is limited;

(*e*) the amount of capital with which the Company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations :—

(*f*) that no subscriber shall take less than one share;

(*g*) that each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a Company

9. Where a Company is formed on the principle of having the liability of its members limited to such amount

amount as the members respectively undertake to contribute to the assets of the Company in the event of the same being wound up (hereinafter referred to as a Company limited by guarantee), the memorandum of association shall contain the following things (that is to say):— limited by guarantee.

(*a*) the name of the proposed Company, with the addition of the word "limited" as the last word in such name;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established;

(*d*) a declaration that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

10. Where a Company is formed on the principle of having no limit placed on the liability of its members (hereinafter referred to as an unlimited Company), the memorandum of association shall contain the following things (that is to say):— Memorandum of association of an unlimited Company.

(*a*) the name of the proposed Company;

(*b*) the part of British India in which the registered office of the Company is proposed to be situate;

(*c*) the objects for which the proposed Company is to be established.

11. The memorandum of association shall be signed by each subscriber in the presence of, and be attested by, one witness at the least. It shall, when registered, bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto, Signature and effect of memorandum of association.

thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors and administrators, a contract to observe all the conditions of such memorandum subject to the provisions of this Act.

Power of certain Companies to alter memorandum of association.

12. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned, as to increase its capital, by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid up shares into stock; but, save as aforesaid, and save as hereinafter provided, no alteration shall be made by any Company in the conditions contained in its memorandum of association.

Reduction of Capital and Shares.

Power to Company to reduce capital.

13. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed, or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any Company shall come into operation until an order of the Court is registered by the Registrar of joint stock Companies, as is hereinafter mentioned.

Explanation I.—The word "capital" includes paid up capital.

Explanation II.—The power to reduce capital conferred by this section includes a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the Company; and paid up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the Company; and, to the extent to which such liability is not extinguished or reduced, it shall be deemed to be preserved, notwithstanding anything hereinafter contained.

14. The

14. The Company shall, after the date of the passing of any special resolution for reducing its capital, add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name, and those words shall, until such date, be deemed to be part of the name of the Company.

Company to add "and reduced" to its name for a limited period.

15. A Company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction, and, on the hearing of the petition, the Court, if satisfied that, with respect to every creditor of the Company who, under the provisions of this Act, is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Company to apply to the Court for an order confirming reduction.

When the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction; and it shall not be necessary, before the presentation of any petition under this section, to add, and the Court may, if it thinks fit so to do, dispense with the addition of, the words "and reduced," as mentioned in section fourteen.

In any case that the Court thinks fit so to do, it may require the Company to publish, in such manner as the Court thinks fit, the reasons for the reduction or such other information regarding the same as the Court may think expedient with a view to give proper information to the public in relation to such reduction, and if the Court thinks fit, the cause which led thereto.

16. Where a Company proposes to reduce its capital, every creditor of the Company who, at the date fixed by the Court, is entitled to any debt or claim which, if that date were the commencement of the

Creditors may object to reduction, and list of objecting creditors to be settled by Court.

the winding-up of the Company, would be admissible in proof against the Company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible, without requiring an application from any creditor, the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the Company who are not entered on the list are to claim to be so entered, or to be excluded from the right of objecting to the proposed reduction:

Provided that, when the reduction does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid up capital, the creditors of the Company shall not, unless the Court otherwise directs, be entitled to object, or required to consent, to the reduction.

Court may dispense with consent of creditor on security being given for his debt.

17. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it thinks fit) dispense with such consent on the Company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned (that is to say):—

(*a*) If the full amount of the debt or claim of the creditor is admitted by the Company, or, though not admitted, is such as the Company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(*b*) If the full amount of the debt or claim of the creditor is not admitted by the Company, and is not such as the Company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it thinks fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the Company may

may be liable in respect thereof, in the same manner as if the Company were being wound up by the Court; and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order and minute to be registered.

18. The Registrar of joint stock Companies, upon the production to him of an order of the Court confirming the reduction of the capital of a Company, and the delivery to him of a copy of the order and of a minute (approved by the Court), showing, with respect to the capital of the Company as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, and the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share, shall register the order and minute; and, on the registration, the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The Registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act, with respect to the reduction of capital, have been complied with, and that the capital of the Company is such as is stated in the minute.

Minute to form part of memorandum of association.

19. The minute, when registered, shall be deemed to be substituted for the corresponding part of the memorandum of association of the Company, and shall be of the same validity, and subject to the same alterations, as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the Company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who

20. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital

are ignorant of proceedings.

capital of a Company under this Act is, in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the Company is unable, within the meaning of this Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the Company at the date of the registration of the order and minute relating to the reduction of its capital shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the Company had commenced to be wound up on the day prior to such registration;

and, on the Company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it thinks fit, settle a list of such contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding-up.

Nothing in this section shall affect the rights of the contributories of the Company among themselves.

Registered minute to be embodied in memorandum of association.

21. A minute, when registered, shall be embodied in every copy of the memorandum of association issued after its registration; and, if any Company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding ten rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty on concealment of name of creditor.

22. If any director, manager or officer of the Company wilfully conceals the name of any creditor of the Company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the Company, or if any director or manager of the Company

pany abets, within the meaning of the Indian Penal Code, any such concealment or misrepresentation as aforesaid, every such director, manager or officer shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Power to reduce capital by cancellation of unissued shares.

23. Any Company limited by shares may so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of passing such resolution, have not been taken or agreed to be taken by any persons; and the provisions as to reduction of capital contained in the other sections of this Act shall not apply to any reduction made in pursuance of this section.

Sub-division of Shares.

Shares may be divided into shares of smaller amount.

24. Any Company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorized so to do by its regulations as originally framed or as altered by special resolution, as, by sub-division of its existing shares or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association:

Provided that, in the sub-division of the existing shares, the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Special resolution to be embodied in memorandum of association.

25. The statement of the number and amount of the shares into which the capital of the Company is divided, contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any Company which makes default in complying with the provisions of this section shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly

knowingly or wilfully authorizes or permits such default shall incur the like penalty.

Associations not for Profit.

Special provisions as to associations formed for purposes not of gain.

26. Where any association which might be formed under this Act as a limited Company proves to the Local Government that it is formed for the purpose of promoting commerce, art, science, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association, in promoting its objects, and to prohibit the payment of any dividend to its members, the Local Government may, by license under the hand of one of its Secretaries, direct such association to be registered with limited liability, without the addition of the word "limited" to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited Companies; with the exceptions that none of the provisions of this Act that require a limited Company to use the word "limited" as any part of its name, or to publish its name, or to send a list of its members, directors or managers to the Registrar, shall apply to an association so registered.

The license by the Local Government may be granted upon such conditions and subject to such regulations as the Local Government thinks fit to impose; and such conditions and regulations shall be binding on the association, and may at the option of the Local Government be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon Shares.

Company may have some shares fully paid, and others not.

27. Nothing herein contained shall be deemed to prevent any Company under this Act, if authorized by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things, namely:—

(*a*) making arrangements on the issue of shares for a difference between the holders of such shares in the

the amount of calls to be paid, and in the time of payment of such calls;

(*b*) accepting from any member of the Company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made;

(*c*) paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others.

Manner in which shares are to be issued and held.

28. Every share in any Company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same has been otherwise determined by a contract duly made in writing and filed with the Registrar of joint stock Companies at or before the issue of such shares.

Transfer of Shares.

Transfer may be registered at request of transferor.

29. A Company shall, on the application of the transferor of any share or interest in the Company, enter in its register of members the name of the transferee of such share or interest in the same manner and subject to the same conditions as if the application for such entry were made by the transferee.

Share-warrants to Bearer.

Warrant of limited shares fully paid up may be issued in name of bearer.

30. In the case of a Company limited by shares, the Company, if authorized so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant (hereinafter referred to as a share-warrant) stating that the bearer thereof is entitled to the shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on such shares or stock.

Coupons

Effect of share-warrant.

31. A share-warrant shall entitle the bearer thereof to the shares or stock specified therein; and such shares

shares or stock may be transferred by the delivery of the share-warrant.

Re-registration of bearer of a share-warrant in the register.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of a share-warrant a member.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in register where share-warrant issued.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:—

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(*c*) the date of the issue of the warrant.

Stamps on share-warrants.

35. There shall be charged on every share-warrant a stamp-duty of an amount equal to three times the amount of the *ad valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such shares or stock.

If

If a share-warrant is issued without being duly stamped, the Company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the Company, shall forfeit the sum of five hundred rupees.

Penalty for issuing share-warrant not duly stamped.

Change of Name.

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Power of Companies to change name.

Explanation.—The issue of the certificate of incorporation is necessary to complete the change of name.

Articles of Association.

37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

Regulations to be prescribed by articles of association.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case

shares or stock may be transferred by the delivery of the share-warrant.

Re-registration of bearer of a share-warrant in the register.

32. The bearer of a share-warrant shall, subject to the regulations of the Company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members; and the Company shall be responsible for any loss incurred by any person by reason of the Company entering in its register of members the name of any bearer of a share-warrant in respect of the shares or stock specified therein without the share-warrant being surrendered and cancelled.

Regulations of the Company may make the bearer of a share-warrant a member.

33. The bearer of a share-warrant may, if the regulations of the Company so provide, be deemed to be a member of the Company within the meaning of this Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided that the bearer of a share-warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the Company in cases where such a qualification is prescribed by the regulations of the Company.

Entries in register where share-warrant issued.

34. On the issue of a share-warrant in respect of any share or stock, the Company shall strike out of its register of members the name of the member then entered therein as holding such share or stock, as if he had ceased to be a member, and shall enter in the register the following particulars:—

(*a*) the fact of the issue of the warrant;

(*b*) a statement of the shares or stock included in the warrant, distinguishing each share by its number;

(*c*) the date of the issue of the warrant.

Stamps on share-warrants.

35. There shall be charged on every share-warrant a stamp-duty of an amount equal to three times the amount of the *ad valorem* stamp-duty which would be chargeable on an instrument transferring the shares or stock specified in the warrant if the consideration for the transfer were the nominal value of such shares or stock.

If

If a share-warrant is issued without being duly stamped, the Company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the Company, shall forfeit the sum of five hundred rupees.

Penalty for issuing share-warrant not duly stamped.

Change of Name.

36. Any Company under this Act, with the sanction of a special resolution of the Company passed in manner hereinafter mentioned, and with the approval of the Local Government testified in writing under the hand of one of the Secretaries to such Government, may change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company; and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

Power of Companies to change name.

Explanation.—The issue of the certificate of incorporation is necessary to complete the change of name.

Articles of Association.

37. The memorandum of association may, in the case of a Company limited by shares, and shall, in the case of a Company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the Company as the subscribers to the memorandum of association deem expedient.

Regulations to be prescribed by articles of association.

The articles shall be expressed in separate paragraphs, numbered consecutively. They may adopt all or any of the provisions contained in the table marked A in the first schedule hereto. They shall, in the case

case of a Company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the Company proposes to be registered, and in the case of a Company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the Company proposes to be registered, for the purpose of enabling the Registrar to determine the fees payable on registration.

In a Company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of table A.

38. In the case of a Company limited by shares, if the memorandum of association is not accompanied by articles of association, or, in so far as the articles do not exclude or modify the regulations contained in the table marked A in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the Company, in the same manner and to the same extent as if they had been inserted in articles of association and the articles had been duly registered.

Signature and effect of articles of association.

39. The articles of association shall be printed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least.

When registered, they shall bind the Company and the members thereof to the same extent as if each member had subscribed his name thereto and as if such articles contained a contract on the part of himself, his heirs, executors and administrators to conform to all the regulations contained in such articles subject to the provisions of this Act.

All monies payable by any member to the Company in pursuance of the conditions and regulations of the Company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the Company.

General

General Provisions.

40. The memorandum of association, and the articles of association, if any, shall be delivered to the Registrar of joint stock Companies hereinafter mentioned, who shall retain and register the same. It is not his duty to require evidence as to whether the several subscribers to a memorandum of association so delivered are competent to contract.

Registration of memorandum of association and articles of association with fees as in table B.

There shall be paid to the Registrar by a Company having a capital divided into shares, in respect of the several matters mentioned in the table marked B in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct, and by a Company not having a capital divided into shares, in respect of the several matters mentioned in the table marked C in the first schedule hereto, the several fees therein specified, or such smaller fees as the Governor General in Council may from time to time direct.

All fees paid to the said Registrar in pursuance of this Act shall be accounted for to Government.

41. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the Registrar shall certify under his hand that the Company is incorporated, and in the case of a limited Company that the Company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the Company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated Company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the Company, in the event of the same being wound up, as is hereinafter mentioned.

Effect of registration.

A certificate

A certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with.

Copies of memorandum and articles to be given to members.

42. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of such sum, not exceeding one rupee, as may be prescribed by the Company for each copy; and if any Company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member in pursuance of this section, the Company so making default shall for each such offence incur a penalty not exceeding twenty rupees.

Prohibition against identity of names in Companies.

43. No Company shall be registered under a name identical with that by which a subsisting Company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting Company is in the course of being dissolved and testifies its consent in such manner as the Registrar requires.

If any Company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting Company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned Company may, with the sanction of the Registrar, change its name; and, upon such change being made, the Registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the Company, or render defective any legal proceedings instituted or to be instituted by or against the Company, and any legal proceedings may be continued or commenced against the Company by its new name that might have been continued or commenced against the Company by its former name.

PART II.

PART II.

Distribution of Capital and Liability of Members of Companies and Associations under this Act.

Distribution of Capital.

44. The shares or other interest of any member in a Company under this Act shall be moveable property, capable of being transferred in manner provided by the regulations of the Company, and shall not be of the nature of real estate or immoveable property; and each share shall, in the case of a Company having a capital divided into shares, be distinguished by its appropriate number.

Nature of interest in Company.

45. The subscribers of the memorandum of association of any Company under this Act shall be deemed to have agreed to become members of the Company whose memorandum they have subscribed, and upon the registration of the Company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed with a Company under this Act to become a member of such Company, and whose name is entered on the register of members, shall be deemed to be a member of the Company.

Definition of "member."

46. Any transfer of the share or other interest of a deceased member of a Company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer.

Transfer by personal representative.

47. Every Company under this Act shall cause to be kept in one or more books a register of its members, and there shall be entered therein the following particulars:—

Register of members.

(*a*) the names and addresses, and the occupations, if any, of the members of the Company, with the addition, in the case of a Company having a capital divided

divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member;

(*b*) the date at which the name of any person was entered in the register as a member;

(*c*) the date at which any person ceased to be a member.

Where a share-warrant has been issued under section thirty, until the warrant is surrendered, the particulars mentioned in section thirty-four shall be deemed to be the particulars which are required by this section to be entered in the register of members of a Company; and, on the surrender of a warrant, the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Any Company acting in contravention of this section shall incur a penalty not exceeding fifty rupees for every day during which its default in complying with the provisions of this section continues, and every director or manager of the Company who knowingly and wilfully authorizes or permits such contravention shall incur the like penalty.

Annual list of members.

48. Every Company under this Act and having a capital divided into shares shall make, once at least in every year, a list of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or, if there is more than one ordinary general meeting in each year, the first of such ordinary general meetings, is held, are members of the Company. Such list shall state the names, addresses and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars:—

(*a*) the amount of the capital of the Company and the number of shares into which it is divided;

(*b*) the number of shares taken from the commencement of the Company up to the date of the summary;

(*c*) the

(*c*) the amount of calls made on each share;

(*d*) the total amount of calls received;

(*e*) the total amount of calls unpaid;

(*f*) the total amount of shares forfeited;

(*g*) the names, addresses and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section; and a copy shall forthwith be forwarded to the Registrar of joint stock Companies.

Particulars to be contained in annual summary.

49. After the issue by the Company of a share-warrant, the annual summary required by section forty-eight shall contain the following particulars (namely):—the total amount of shares or stock for which share-warrants are outstanding at the date of the summary, and the total amount of share-warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Penalty on Company, &c., not keeping a proper register.

50. If any Company under this Act and having a capital divided into shares makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the Registrar, such Company shall incur a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Company to give notice of consolidation or of conversion of capital into stock.

51. Every Company under this Act having a capital divided into shares that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock, shall, within fifteen days of such consolidation, division or conversion, give notice to the

the Registrar of joint stock Companies of the same, specifying the shares so consolidated, divided or converted.

Effect of conversion of shares into stock.

52. Where any Company under this Act and having a capital divided into shares has converted any portion of its capital into stock and given notice of such conversion to the Registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock; and the register of members hereby required to be kept by the Company and the list of members to be forwarded to the Registrar shall show the amount of stock held by each member in the list, instead of the amount of shares and the particulars relating to shares hereinbefore required.

Entry of trusts on register.

53. No notice of any trust, express, implied or constructive, shall be entered on the register or be receivable by the Registrar in the case of Companies under this Act and registered in British India.

Certificate of shares or stock.

54. A certificate under the common seal of the Company, specifying any shares or stock held by any member of a Company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified.

Inspection of register.

55. The register of members, commencing from the date of the registration of the Company, shall be kept at the registered office of the Company hereinafter mentioned. Except when closed as hereinafter mentioned, it shall, during business hours, but subject to such reasonable restrictions as the Company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one rupee, or such less sum as the Company may prescribe, for each inspection.

Every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of two annas for every hundred words required to be copied.

If

If such inspection or copy is refused, the Company shall incur for each refusal a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

Every director and manager of the Company who knowingly authorizes or permits such refusal shall incur the like penalty.

In addition to the above penalty any Judge of a High Court may, by order, compel an immediate inspection of the register.

Power to close register.

56. Any Company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the Company is situate and in the local official Gazette, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to Registrar.

57. Where a Company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital, and where a Company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the Registrar, in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorized, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the Registrar shall forthwith record the amount of such increase of capital or members.

If such notice is not given within the period aforesaid, the Company in default shall incur a penalty not exceeding one hundred rupees for every day during which such neglect to give notice continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

58. If

Remedy for improper entry or omission of entry in register.

58. If the name of any person is fraudulently or without sufficient cause entered in, or omitted from, the register of members kept by any Company under this Act, or if default is made, or unnecessary delay takes place, in entering on the register the fact of any person having ceased to be a member of the Company, the person or member aggrieved, or any member of the Company, or the Company itself, may, by application to the principal Court of original civil jurisdiction in the district or place in which the registered office of the Company is situate, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the justice of the case, make an order for the rectification of the register, and may direct the Company to pay all the costs of such application, and any damages the party aggrieved may have sustained.

The Court may in any proceeding under this section decide any question relating to the title of any person who is a party to such proceeding to have his name entered in, or omitted from, the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the Company, and whether there has or has not been default on the part of the Company; and generally the Court may, in any such proceeding, decide any question that it may be necessary or expedient to decide for the rectification of the register: provided that the Court may direct an issue to be tried in which any question of law may be raised; and an appeal in the manner directed by the Code of Civil Procedure shall lie.

Notice to Registrar of rectification of register.

59. Whenever any order has been made for rectifying the register in the case of a Company hereby required to send a list of its members to the Registrar, the Court shall, by its order, direct that due notice of such rectification be given to the Registrar.

Register to be evidence.

60. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorized to be inserted therein.

Liability

Liability of Members.

Liability of present and past members of Company.

61. In the event of a Company formed under this Act being wound up, every present and past member of such Company shall be liable to contribute to the assets of the Company to an amount sufficient for payment of the debts and liabilities of the Company and the costs, charges and expenses of the winding-up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following (that is to say):—

(*a*) No past member shall be liable to contribute to the assets of the Company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding-up:

(*b*) No past member shall be liable to contribute in respect of any debt or liability of the Company contracted after the time at which he ceased to be a member:

(*c*) No past member shall be liable to contribute to the assets of the Company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*d*) In the case of a Company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(*e*) In the case of a Company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association:

(*f*) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the Company are alone made liable in respect of such policy or contract:

(*g*) No

(*g*) No sum due to any member of a Company in his character of a member, by way of dividends, profits or otherwise, shall be deemed to be a debt of the Company payable to such member in a case of competition between himself and any other creditor not being a member of the Company; but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves.

Explanation I.—The liability of past members is a liability to contribute to the general assets of the Company, against which assets creditors (at whatever time their debts may have been contracted) have equal rights.

Explanation II.—In estimating the debts to which a past member is liable, all dividends paid on these debts under the winding-up must be deducted.

Liability of director whose liability is unlimited.

62. With respect to the contributions to be required in the event of the winding-up of a limited Company from any director or manager whose liability is unlimited, the following modifications shall be made in the last preceding section:—

(*a*) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited Company:

(*b*) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company:

(*c*) No contribution required from any past director or manager in respect of any debt or liability of the Company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the Company:

(*d*) Subject

(*d*) Subject to the provisions contained in the regulations of the Company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court thinks it necessary to require such contribution in order to satisfy the debts and liabilities of the Company, or the costs, charges and expenses of the winding-up.

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for Protection of Creditors.

63. Every Company under this Act shall have a registered office to which all communications and notices may be addressed. If any Company under this Act carries on business without having such an office, it shall incur a penalty not exceeding fifty rupees for every day during which business is so carried on.

Registered office of Company.

64. Notice of the situation of such registered office and of any change therein shall be given to the Registrar and recorded by him. Until such notice is given, the Company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office.

Notice of situation of registered office.

65. Every limited Company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed, its name on the outside of every office or place in which the business of the Company is carried on, in a conspicuous position, in letters easily legible, in the English language, and also, if the registered office be situate in a district beyond the local limits of the ordinary original civil jurisdiction of a High Court, in one of the vernacular languages used in such district, and shall have its name engraven in legible characters in such language or languages on its seal, and shall have its name mentioned in legible characters in such language

Publication of name by a limited Company.

language or languages in all notices, advertisements and other official publications of such Company, and in all bills of exchange, hundís, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such Company, and in all bills of parcels, invoices, receipts and letters of credit of the Company.

Penalties on non-publication of name.

66. If any limited Company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding fifty rupees for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed.

Every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to the like penalty.

If any director, manager or officer of such Company, or any person on its behalf, uses or authorizes the use of any seal purporting to be a seal of the Company whereon its name is not so engraven as aforesaid, or issues or authorizes the issue of any notice, advertisement or other official publication of such Company, or signs or authorizes to be signed on behalf of such Company any bill of exchange, hundí, promissory note, endorsement, cheque, order for money or goods, or issues or authorizes to be issued any bill of parcels, invoice, receipt or letter of credit of the Company wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of one thousand rupees, and shall further be personally liable to the holder of any such bill of exchange, hundí, promissory note, cheque or order for money or goods for the amount thereof, unless the same is duly paid by the Company.

Contracts.

Contracts how made.

67. Contracts on behalf of any Company under this Act may be made as follows (that is to say) :—

(*a*) Any contract, which if made between private persons would be by law required to be in writing, and, if made according to English law, to be under seal,

seal, may be made on behalf of the Company in writing under the common seal of the Company; and such contract may be in the same manner varied or discharged:

(*b*) Any contract, which if made between private persons would be by law required to be in writing signed by the parties to be charged therewith, may be made on behalf of the Company in writing signed by any person acting under the express or implied authority of the Company; and such contract may in the same manner be varied or discharged:

(*c*) Any contract, which if made between private persons would by law be valid, although made by parol only and not reduced into writing, may be made by parol on behalf of the Company by any person acting under the express or implied authority of the Company; and such contract may in the same way be varied or discharged. And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the Company and their successors, and all other parties thereto, their heirs, executors or administrators, as the case may be.

Register of mortgages.

68. Every limited Company under this Act shall keep a register of all mortgages and charges specifically affecting property of the Company, and shall enter in such register, in respect of each mortgage or charge, a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge.

If any property of the Company is mortgaged or charged without such entry as aforesaid being made, every director, manager or other officer of the Company who knowingly and wilfully authorizes or permits the omission of such entry shall incur a penalty not exceeding five hundred rupees.

The register of mortgages required by this section shall be open to inspection by any creditor or member of the Company at all reasonable times. If such inspection is refused, any officer of the Company refusing

ing the same, and every director and manager of the Company authorizing or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding fifty rupees, and a further penalty not exceeding twenty rupees for every day during which such refusal continues.

The High Court or any Judge thereof may by order compel the performance of the duty imposed by this section on a limited Company, and in addition to the above penalty may, by order, compel an immediate inspection of the register.

Explanation.—Omission to register under this section a mortgage or charge does not render the same invalid. But the officers of the Company cannot avail themselves as such of a mortgage or charge specifically affecting property of the Company and not so registered.

Certain Companies to publish statement entered in schedule.

69. Every limited banking Company, and every insurance Company, and deposit, provident or benefit Society under this Act, shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the form marked D in the first schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the Company and in every branch office or place where the business of the Company is carried on.

If default is made in compliance with the provisions of this section, the Company shall be liable to a penalty not exceeding fifty rupees for every day during which such default continues; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Every member and every creditor of any Company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding eight annas.

70. Every

70. Every Company under this Act and not having a capital divided into shares shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the Registrar of joint stock Companies a copy of such register, and shall from time to time notify to the Registrar any change that takes place in such directors or managers.

List of directors to be sent to Registrar.

71. If any Company under this Act and not having a capital divided into shares makes default in keeping a register of its directors or managers, or in sending a copy of such register to the Registrar in compliance with the foregoing rules, or in notifying to the Registrar any change that takes place in such directors or managers, such delinquent Company shall incur a penalty not exceeding one hundred rupees for every day during which such default continues; and every director or manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

Penalty on Company not keeping register of directors.

72. A promissory note, bill of exchange or hundí shall be deemed to have been made, drawn, accepted or endorsed on behalf of any Company under this Act, if made, drawn, accepted or endorsed in the name of the Company by any person acting under the authority of the Company, or if made, drawn, accepted or endorsed by or on behalf or on account of the Company by any person acting under the authority of the Company.

Promissory notes, bills of exchange and hundis.

73. If any Company under this Act carries on business when the number of its members is less than seven, for a period of six months after the number has been so reduced, every person who is a member of such Company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business with fewer than seven members, shall be severally liable for the payment of the whole debt of the Company contracted during such time, and may be sued for the same without the joinder in the suit of any other member.

Prohibition against carrying on business with less than seven members.

Provisions

Provisions for Protection of Members.

General meeting of Company.

74. A general meeting of every Company under this Act shall be held once at the least in every year.

Balance-sheet.

A balance-sheet shall be made out and filed with the Registrar of joint stock Companies within twelve months after the Company has been registered, and once at least in every year afterwards within twelve months from the filing of the balance-sheet immediately preceding; and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to table A in the first schedule hereto, or as near thereto as circumstances admit.

Audit.

And once at the least in every year the accounts of the Company shall be examined and the correctness of the last balance-sheet and its conformity with the law ascertained and certified by one or more auditor or auditors.

No balance-sheet shall be filed with the Registrar unless and until its correctness and conformity with the law have been so ascertained and certified, and it has been laid before and adopted by the Company in general meeting.

If default is made in compliance with any of the provisions of this section, every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall be liable to a penalty of one thousand rupees.

Meetings.

Company to hold meeting within six months after registration.

75. Every Company formed under this Act, after the commencement of this Act, shall hold a general meeting within six months after its memorandum of association is registered; and, if such meeting is not held, the Company shall be liable to a penalty not exceeding fifty rupees a day for every day after the expiration of such six months, until the meeting is held; and every director or manager of the Company and every subscriber of the memorandum of association

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tion who knowingly authorizes or permits such default shall be liable to the same penalty.

Power to alter regulations by special resolution.

76. Subject to the provisions of this Act and to the conditions contained in the memorandum of association, any Company formed under this Act or the Indian Companies Act, 1866, may, in general meeting, from time to time, by passing a special resolution in manner hereinafter mentioned, alter all or any of the regulations of the Company contained in the articles of association, or in the table marked A in the first schedule, where such table is applicable to the Company, or make new regulations to the exclusion of, or in addition to, all or any of the regulations of the Company.

Any regulations so made by special resolution shall be deemed to be regulations of the Company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Power to make liability of directors unlimited.

Any limited Company formed under this Act or the Indian Companies Act, 1866, may by a special resolution, if authorized to do so by its regulations as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited, from and after the date of such resolution, the liability of its directors or managers, or of the managing director. Such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in, or annexed to, every copy of the memorandum of association which is issued after the passing of the resolution.

Definition of "special resolution."

77. A resolution passed by a Company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the Company for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy (in cases where by the regulations of the Company

Company proxies are allowed) at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the Company, to vote, as may be present in person or by proxy at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days, nor more than one month, from the date of the meeting at which such resolution was first passed.

At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the same.

Notice of any meeting shall, for the purposes of this section, be deemed to be duly given and the meeting to be duly held whenever such notice is given and meeting held in manner prescribed by the regulations of the Company.

In computing the majority under this section when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the Company.

Provision where no regulations as to meetings.

78. In default of any regulations as to voting, every member shall have one vote, and, in default of any regulations as to summoning general meetings, a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the table marked A in the first schedule hereto.

In default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same, and, in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside.

79. A copy

79. A copy of every special resolution that is passed by any Company under this Act shall be printed and forwarded to the Registrar of joint stock Companies and be recorded by him. Registration of special resolutions.

If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the Company shall incur a penalty not exceeding twenty rupees for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

80. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to, or embodied in, every copy of the articles of association that may be issued after the passing of such resolution. Where no articles of association have been registered, a copy of every special resolution shall be forwarded in print to any member requesting the same on payment of one rupee or such less sum as the Company may direct. Copies of special resolutions to be embodied in articles of association.

If any Company makes default in complying with the provisions of this section or section seventy-six, it shall incur a penalty not exceeding twenty rupees for each copy in respect of which such default is made; and every director and manager of the Company who knowingly and wilfully authorizes or permits such default shall incur the like penalty.

81. Any Company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in British India; and every deed signed by such attorney on behalf of the Company and under his seal shall be binding on the Company and have the same effect as if it were under the common seal of the Company. Execution of deeds abroad.

82. The Local Government may appoint one or more competent inspectors to examine into the affairs of Examination of affairs of Company by inspectors.

of any Company under this Act, and to report thereon in such manner as the Local Government may direct upon the applications following (that is to say):—

(*a*) In the case of a banking or any other Company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the Company for the time being issued:

(*b*) In the case of any Company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the Company as members.

Application for inspection to be supported by evidence.

83. The application shall be supported by such evidence as the Local Government may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same.

The Local Government may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books.

84. It shall be the duty of all officers and agents of the Company to produce for the examination of the inspectors all books and documents in their custody or power.

Any inspector may examine upon oath the officers and agents of the Company in relation to its business.

If any such officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the Company, he shall incur a penalty not exceeding one hundred rupees in respect of each such offence.

Result of examination how dealt with.

85. Upon the conclusion of the examination, the inspectors shall report their opinions to the Local Government. Such report shall be written or printed as the Local Government directs.

A copy shall be forwarded by the Local Government to the registered office of the Company, and a further

further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them.

All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Local Government shall direct the same to be paid out of the assets of the Company, which the Local Government is hereby authorized to do.

Power of Company to appoint inspectors.

86. Any Company under this Act may, by a special resolution, appoint inspectors for the purpose of examining into the affairs of the Company.

The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Local Government, with this exception, that, instead of making their report to the Local Government, they shall make the same in such manner and to such persons as the Company in general meeting directs.

The officers and agents of the Company shall incur the same penalties in case of any refusal to produce any book or document hereby required to be produced to such inspectors, or to answer any question, as they would have incurred if such inspectors had been appointed by the Local Government.

Report of inspectors to be evidence.

87. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the Company into whose affairs they have made inspection, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Prospectus, &c., to specify dates and names of parties to certain prior contracts.

88. Every prospectus of a Company, and every notice inviting persons to subscribe for shares in any joint stock Company, shall specify the dates and the names of the parties to any agreement enforceable by law which has been entered into by the Company, or the promoters, directors or trustees thereof, before the issue of such prospectus or notice (whether subject to adoption by the directors or the Company, or otherwise), and which might reasonably influence a person in

in determining whether he would or would not become a shareholder in the Company; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the Company knowingly issuing the same, as regards any person taking shares in the Company on the faith of such prospectus, unless he has had notice of such contract.

Notices.

Service of notices on Company.

89. Any summons, notice, order or other document required to be served upon the Company may be served by leaving the same, or sending it through the post by a registered letter addressed to the Company, at their registered office; and any notice to the Registrar of joint stock Companies may be served by sending it to him through the post by a registered letter, or by delivering it to him or by leaving it for him at his office.

Rules as to notices by letter.

90. Every document to be served by post on the Company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a registered letter into the post office.

Authentication of notices by Company.

91. Any summons, notice, order or proceeding requiring authentication by the Company may be signed by any director, secretary or other authorized officer of the Company, and need not be under the common seal of the Company; and the same may be in writing or in print, or partly in writing and partly in print.

Legal Proceedings.

Evidence of proceedings at meetings.

92. Every Company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the Company, and of the directors or managers of the Company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman

chairman of the meeting at which such resolutions were passed or prcceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings.

Until the contrary is proved, every general meeting of the Company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened, and all resolutions passed thereat or proceedings had to have been duly passed and had, and all appointments of directors, managers or liquidators shall be deemed to be valid, and all acts done by such directors, managers or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications.

Explanation.—Nothing in this section shall be deemed to give validity to acts done by a liquidator after his appointment has been shown to be invalid.

Provision as to costs in suits brough by certain limited Companies.

93. Where a limited Company is plaintiff in any suit, if it appears from the evidence adduced that there is reason to believe that, if the defendant be successful in his defence, the assets of the Company will be insufficient to pay his costs, any Judge having jurisdiction in the matter may require sufficient security to be given for such costs, and may stay all proceedings until such security is given.

Plaints in suits against members.

94. In any suit brought by the Company against any member to recover any call or other monies due from such member in his character of member, it shall be sufficient to allege that the defendant is a member of the Company and is indebted to the Company in respect of a call made or other monies due whereby a suit has accrued to the Company.

Alteration of Forms.

Forms to be used.

95. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer.

Governor

The Governor General in Council may from time to

General in Council may alter forms.

to time make such alterations in the tables and forms contained in the first schedule hereto, so that he does not increase the amount of fees payable to the Registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as he deems requisite.

Any such table or form, when altered, shall be published in the *Gazette of India*, and, upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Governor General in Council in the table marked A contained in the first schedule shall affect any Company registered prior to the date of such alteration, or repeal, as respects such Company, any portion of such table.

Arbitrations.

Power for Companies to refer matters to arbitration.

96. Any Company under this Act may from time to time, by writing under its common seal, agree to refer, and may refer, to arbitration any matter whatsoever in dispute between itself and any other Company or person; and the Companies, parties to the arbitration, may delegate to the person or persons, to whom the reference is made, power to settle any terms or to determine any matter capable of being lawfully settled or determined by the Companies themselves, or by the directors or other managing body of such Companies.

Power to alter or revoke agreements for reference.

97. The Companies jointly, but not otherwise, from time to time, by writing under their respective common seals, may add to, alter or revoke any agreement for reference in accordance with this Act theretofore entered into between the Companies, or any of the terms, conditions or stipulations thereof.

Agreements to be carried into effect.

98. Every reference or agreement in accordance with this Act, except so far as it is from time to time revoked or modified in accordance with this Act, shall bind the Companies, and may and shall be carried into full effect.

Reference to arbitrator.

99. Where the Companies agree, the reference shall be made to a single arbitrator.

100. Except

100. Except where the Companies agree that the reference shall be made to a single arbitrator, the reference shall be made as follows, to wit:—

Reference to two or more arbitrators.

where there are two Companies, the reference shall be made to two arbitrators;

where there are three or more Companies, the reference shall be made to so many arbitrators as there are Companies.

101. Where there are to be two or more arbitrators, every Company shall by writing under their common seal appoint one of the arbitrators, and shall give notice in writing thereof to the other Company or Companies.

Appointment of arbitrators by Compa-

102. Where there are to be two or more arbitrators, if any of the Companies fail to appoint an arbitrator within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government, instead of the Company so failing to appoint an arbitrator, may appoint an arbitrator. The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrators by Local Government.

103. Where the reference is made to two or more arbitrators, if before the matters referred to them are determined any arbitrator dies, or becomes incapable or unfit, or for seven consecutive days fails to act as arbitrator, the Company by which he was appointed shall by writing under their common seal appoint an arbitrator in his place.

Appointment of arbitrators by Companies to supply vacancies.

104. Where the Company, by which an arbitrator ought to be appointed in the place of the arbitrator so deceased, incapable, unfit or failing to act, fails to make the appointment within fourteen days after being thereunto requested in writing by the other Company, or by the other Companies or any of them, then, on the application of the Companies or any of them, the Local Government may appoint an arbitrator.

Appointment of arbitrators by Local Government to supply vacancies.

The

The arbitrator so appointed shall for the purposes of this Act be deemed to be appointed by the Company so failing.

Appointment of arbitrator not revocable.

105. When any appointment of an arbitrator is made, the Company making the appointment shall have no power to revoke the same without the previous consent in writing of the other Company or every other Company in writing under their common seal.

Appointment of umpire by arbitrators.

106. Where two or more arbitrators are appointed, they shall, before entering on the business of the reference, appoint by writing under their hands an impartial and qualified person to be their umpire.

Appointment of umpire by Local Government.

107. If the arbitrators do not appoint an umpire within seven days after the reference is made to the arbitrators, then, on the application of the Companies or any of them, the Local Government may appoint an umpire; and the umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators.

Appointment of umpire by arbitrators to supply vacancy.

108. Where two or more arbitrators are appointed, if before the matters referred to them are determined their umpire dies, or becomes incapable or unfit, or for seven consecutive days fails to act as umpire, the arbitrators shall by writing under their hands appoint an impartial and qualified person to be their umpire in his place.

Appointment of umpire by Local Government to supply vacancy.

109. If the arbitrators fail to appoint an umpire within seven days after notice in writing to them of the decease, incapacity, unfitness or failure to act of their umpire, then, on the application of the Companies or any of them, the Local Government may appoint an umpire.

The umpire so appointed shall for the purposes of this Act be deemed to be appointed by the arbitrators so failing.

Succeeding arbitrators and umpires to have powers of predecessors.

110. Every arbitrator appointed in the place of a preceding arbitrator, and every umpire appointed in the place of a preceding umpire, shall respectively have the like powers and authorities as his respective predecessor.

111. Where

111. Where there are two or more arbitrators, if they do not within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the reference is made to the arbitrators, agree on their award thereon, then the matters referred to them, or such of those matters as are not then determined, shall stand referred to their umpire.

Reference to umpire.

112. The arbitrator, and the arbitrators and the umpire respectively may call for the production of any documents or evidence in the possession or power of the Companies respectively, or which they respectively can produce, and which the arbitrator, or the arbitrators or the umpire shall think necessary for determining the matters referred, and may examine the witnesses of the Companies respectively on oath.

Power for arbitrators, &c., to call for books, &c., and examine witnesses on oath.

113. Except where and as the Companies otherwise agree, the arbitrator, and the arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit.

Procedure in the arbitration.

114. The arbitrator, and the arbitrators and the umpire respectively may proceed in the absence of all or any of the Companies in every case in which, after giving notice in that behalf to the Companies respectively, the arbitrator, or the arbitrators or the umpire shall think fit so to proceed.

Arbitration may proceed in absence of Companies.

115. The arbitrator, and the arbitrators and the umpire respectively may, if he and they respectively think fit, make several awards, each on part of the matters referred, instead of one award on all the matters referred.

Several awards may be made.

Every such award on part of the matters shall, for such time as shall be stated in the award, the same being such as shall have been specified in the agreement for arbitration, or, in the event of no time having been so specified, for any time which the arbitrator may be legally entitled to fix, be binding as to all the matters to which it extends, and as if the matters awarded on were all the matters referred, and that

that notwithstanding the other matters or any of them be not then or thereafter awarded on.

Awards made in due time to bind all parties.

116. The award of the arbitrator, or of the arbitrators or of the umpire, if made in writing under his or their respective hand or hands, and ready to be delivered to the Companies within such a time as the Companies agree on, or, failing such agreement, within thirty days next after the matters in difference are referred to (as the case may be) the arbitrator or the arbitrators or the umpire, shall be binding and conclusive on all the Companies.

Power for umpire to extend period for making his award.

117. Provided always that (except where and as the Companies otherwise agree) the umpire, from time to time by writing under his hand, may extend the period within which his award is to be made. If it be made and ready to be delivered within the extended time, it shall be as valid and effectual as if made within the prescribed period.

Awards not to be set aside for informality.

118. No award made on any arbitration in accordance with this Act shall be set aside for any irregularity or informality.

Awards to be obeyed.

119. Except only so far as the Companies bound by any award in accordance with this Act from time to time otherwise agree, all things by every award in accordance with this Act lawfully required to be done, omitted or suffered shall be done, omitted or suffered accordingly.

Agreements, arbitrations and awards to have effect.

120. Full effect shall be given by the Courts according to their respective jurisdictions, and by the Companies respectively, and otherwise, to all agreements, references, arbitrations and awards in accordance with this Act; and the performance or observance thereof, may, where the Courts think fit, be compelled by any process against the Companies respectively or their respective property that the Courts or any Judge thereof shall direct, and where requisite frame, for the purpose.

Costs of arbitration and award.

121. Except where and as the Companies otherwise agree, the costs of and attending the arbitration and the award shall be in the discretion of the arbitrator, and the arbitrators and the umpire respectively.

122. Except

122. Except where and as the Companies otherwise agree, and if and so far as the award does not otherwise determine, the costs of and attending the arbitration and the award shall be borne and paid by the Companies in equal shares, and in other respects the Companies shall bear their own respective costs.

Payment of costs.

123. On the application of any party interested, the submission to any such arbitration may be filed in the High Court, and an order of reference may be made thereon, with any directions the Court thinks fit; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Submission to arbitration to be filed in Court.

PART IV.

WINDING-UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Preliminary.

124. The term "contributory" shall mean every person liable to contribute to the assets of a Company under this Act in the event of the same being wound up; it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory.

Meaning of "contributory."

125. The liability of any person to contribute to the assets of a Company under this Act in the event of the same being wound up shall be deemed to create a debt accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful, in the case of the insolvency of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made.

Nature of liability of contributory.

No claim founded on the liability of a contributory shall be cognizable by any Court of Small Causes situate

situate outside the towns of Calcutta, Madras and Bombay.

Contributories in case of death.

126. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs and devisees shall be liable in due course of administration to contribute to the assets of the Company in discharge of the liability of such deceased contributory; and such personal representatives, heirs and devisees shall be deemed to be contributories accordingly.

Contributories in case of insolvency.

127. If any contributory becomes insolvent, either before or after he has been placed on the list of contributories, his assignees shall be deemed to represent such insolvent for all the purposes of the winding-up, and shall be deemed to be contributories accordingly, and may be called upon to admit to ~~prove~~ against the estate of such insolvent, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such insolvent in respect of his liability to contribute to the assets of the Company being wound up.

Winding-up by Court.

Circumstances under which Company may be wound up by Court.

128. A Company under this Act may be wound up by the Court as hereinafter defined under the following circumstances (that is to say) :—

(*a*) whenever the Company has passed a special resolution requiring the Company to be wound up by the Court;

(*b*) whenever the Company does not commence its business within a year from its incorporation, or suspends its business for the space of a whole year;

(*c*) whenever the members are reduced in number to less than seven;

(*d*) whenever the Company is unable to pay its debts;

(*e*) whenever for any other reason of a like nature the Court is of opinion that it is just and equitable that the Company should be wound up.

129. A Company

129. A Company under this Act shall be deemed to be unable to pay its debts— Company when deemed unable to pay its debts.

(*a*) whenever a creditor, by assignment or otherwise, to whom the Company is indebted in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at its registered office, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor;

(*b*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company is returned unsatisfied in whole or in part;

(*c*) whenever it is proved to the satisfaction of the Court that the Company is unable to pay its debts.

130. The expression "the Court" as used in this Part of this Act shall mean the principal Court having original civil jurisdiction in the place in which the registered office of the Company is situate, unless in the regulations for the management of the Company it shall be stipulated that the Company, if wound up, shall be wound up by the High Court of Judicature at Fort William, Madras or Bombay (as the case may be), or by the Chief Court of the Panjáb, in which case the word "Court" shall mean the said High Court or Chief Court (as the case may be) in the exercise of its original civil jurisdiction. Definition of "the Court."

The expression "debts" as used in this part of this Act means debts actually due, of which the creditor could claim immediate payment, except in the case of a Company issuing or liable under policies of assurance upon human life within British India, or granting annuities upon human life within British India. In the case of such a Company (hereinafter called a life-assurance Company), the expression "debts," as so used, includes also contingent or prospective liability under Definition of "debts."

under policies and annuity and other existing contracts.

Application for winding-up to be made by petition.

131. Any application to the Court for the winding-up of a Company under this Act shall be by petition, which may be presented by the Company, or by any one or more creditor or creditors, contributory or contributories, of the Company, or by all or any of the above parties, together or separately.

The petition must allege facts which, if proved, will justify an order for winding-up the Company. Every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the Company in the same manner as if it had been made upon the joint petition of a creditor and a contributory.

In the case of a life-assurance Company the Court shall not give a hearing to the petition until security for costs for such amount as the Judge thinks reasonable is given, and until a *primâ facie* case is also established to the satisfaction of the Judge; and, where the Company has an uncalled capital of an amount sufficient, with the future premiums receivable by the Company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time to enable the uncalled capital, or a sufficient part thereof, to be called up; and, if at the end of the original or any suspended time for which the proceedings have been suspended such an amount has not been realised by means of calls as with the already invested assets is equal to the liabilities, an order shall be made on the petition as if the Company had been proved to be unable to pay its debts.

Explanation.—Nothing in this section authorizes the presentation of a petition by a member of a Company who is indebted to the Company in respect of a call made, or other monies due.

Contributory when not qualified to present winding-up petition.

132. No contributory of a Company under this Act shall be capable of presenting a petition for winding-up such Company unless the members of the Company

Company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him, or have been held by him, and registered in his name, for a period of at least six months during the eighteen months previous to the commencement of the winding-up, or have devolved upon him through the death of a former holder:

Provided that, where a share has, during the whole or any part of the six months, been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee for such wife, or for the contributory, such share shall, for the purposes of this section, be deemed to have been held by and registered in the name of the contributory.

Commencement of winding-up by Court.

133. A winding-up of a Company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

Court may grant injunction.

134. The Court may, at any time after the presentation of a petition for winding-up a Company under this Act, and before making an order for winding-up the Company, upon the application of the Company or of any creditor or contributory of the Company, restrain further proceedings in any suit or proceeding against the Company, upon such terms as the Court thinks fit.

The Court may also at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an official liquidator of the estate and effects of the Company.

Course to be pursued by Court on hearing petition.

135. Upon hearing the petition, the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order or any other order that it deems just.

Suits to be stayed after order for winding-up.

136. When an order has been made for winding-up a Company under this Act, no suit or other proceeding shall be proceeded with or commenced against the

the Company except with the leave of the Court and subject to such terms as the Court may impose.

Copy of order to be forwarded to Registrar.

137. When an order has been made for winding-up a Company under this Act, a copy of such order shall forthwith be forwarded by the Company to the Registrar of joint stock Companies, who shall make a minute thereof in his books relating to the Company.

Such order shall be deemed to be notice of discharge to the servants of the Company, except when the business of the Company is continued.

Power of Court to stay proceedings.

138. Such Court may, at any time after an order has been made for winding-up a Company, upon the application of any creditor or contributory of the Company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding-up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit.

Effect of order on share-capital of Company limited by guarantee.

139. When an order has been made for winding-up a Company limited by guarantee and having a capital divided into shares, any share-capital that may not have been called up shall be deemed to be assets of the Company and to be a debt due to the Company from each member to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the Court.

Court may have regard to wishes of creditors or contributories.

140. The Court may, as to all matters relating to the winding-up, have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, and may, if it thinks fit, direct meetings of the creditors or contributories to be summoned, held and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard is to be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Official

Official Liquidators.

141. For the purpose of conducting the proceedings in winding-up a Company and assisting the Court therein, there may be appointed a person or persons, to be called an official liquidator or official liquidators.

Appointment of official liquidator.

The Court may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of official liquidator or official liquidators.

In all cases, if more persons than one are appointed to the office of official liquidator, the Court shall declare whether any act hereby required or authorized to be done by the official liquidator is to be done by all or any one or more of such persons.

The Court may also determine whether any, and what, security is to be given by any official liquidator on his appointment.

If no official liquidator is appointed, or during any vacancy in such appointment, all the property of the Company shall be deemed to be in the custody of the Court.

A receiver shall not be appointed of assets in the hands of an official liquidator.

142. Any official liquidator may resign or be removed by the Court on due cause shown. Any vacancy in the office of an official liquidator appointed by the Court shall be filled up by the Court. There shall be paid to the official liquidator such salary or remuneration, by way of percentage or otherwise, as the Court may direct; and, if more liquidators than one are appointed, such remuneration shall be distributed amongst them in such proportions as the Court directs.

Resignations, removals, filling up vacancies and compensation.

143. The official liquidator shall be described by the style of the official liquidator of the particular Company in respect of which he is appointed, and not by his individual name. He shall take into his custody, or under his control, all the property, effects and actionable claims to which the Company is or appears to be entitled, and shall perform such duties in reference to the

Style and duties of official liquidator.

the winding-up of the Company as may be imposed by the Court.

Power of official liquidator.

144. The official liquidator shall have power, with the sanction of the Court, to do the following things :—

(*a*) to bring or defend any suit or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the Company;

(*b*) to carry on the business of the Company so far as may be necessary for the beneficial winding-up of the same;

(*c*) to sell the immoveable and moveable property of the Company by public auction or private contract, with power to transfer the whole thereof to any person or Company, or to sell the same in parcels;

(*d*) to do all acts, and to execute, in the name and on behalf of the Company, all deeds, receipts and other documents, and for that purpose to use, when necessary, the Company's seal;

(*e*) to prove, rank, claim and draw a dividend, in the matter of the insolvency of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of the insolvency, as a separate debt due from such insolvent, and rateably with the other separate creditors;

(*f*) to draw, accept, make and endorse any bill of exchange, hundí or promissory note in the name and on behalf of the Company; also to raise, upon the security of the assets of the Company, from time to time, any requisite sum or sums of money; and the drawing, accepting, making or endorsing of every such bill, hundí or note as aforesaid on behalf of the Company shall have the same effect with respect to the liability of such Company as if such bill or note had been drawn, accepted, made or endorsed by or on behalf of such Company in the course of carrying on the business thereof;

(*g*) to take out, if necessary, in his official name, letters of administration to the estate of any deceased contributory, and to do, in his official name, any other act

act that may be necessary for obtaining payment of any monies due from a contributory or from his estate, and which act cannot be conveniently done in the name of the Company; and, in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the official liquidator himself: provided that nothing herein contained shall be deemed to affect the rights, duties and privileges of the Administrators General of Bengal, Madras and Bombay respectively;

(*h*) to do and execute all such other things as may be necessary for winding-up the affairs of the Company and distributing its assets.

Discretion of official liquidator.

145. The Court may provide by any order that the official liquidator may exercise any of the above powers without the sanction or intervention of the Court, and, where an official liquidator is provisionally appointed, may limit and restrict his powers by the order appointing him.

Appointment of attorney or vakíl to official liquidator.

146. The official liquidator may, with the sanction of the Court, appoint an attorney or vakíl to assist him in the performance of his duties: provided that, where the official liquidator is an attorney, he shall not appoint his partner, unless the latter consents to act without remuneration.

Ordinary Powers of Court.

Collection and application of assets.

147. As soon as may be after making an order for winding-up the Company, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where such rectification is required in pursuance of section fifty-eight, and shall cause the assets of the Company to be collected and applied in discharge of its liabilities existing at the date of the said order.

Provision as to representative contributories.

148. In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right, and persons who are contributories

contributories as being representatives of, or being liable to the debts of, others.

Power of Court to require delivery of property.

149. The Court may, at any time after making an order for winding-up a Company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker or agent or officer of the Company to pay, deliver, convey, surrender or transfer forthwith, or within such time as the Court directs, to or into the hands of the official liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the Company is *primâ facie* entitled.

Power of Court to order payment of debts by contributory.

150. The Court may, at any time after making an order for winding-up the Company, make an order on any contributory for the time being settled on the list of contributories directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the Company, exclusive of any monies which he, or the estate of the person whom he represents, may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act.

The Court may, in making such order, when the Company is not limited, allow to such contributory, by way of set-off, any monies due to him or the estate which he represents from the Company on any independent dealing or contract with the Company, but not any monies due to him as a member of the Company in respect of any dividend or profits:

Provided that, when all the creditors of any Company, whether limited or unlimited, are paid in full, any monies due on any account whatever to any contributory from the Company may be allowed to him by way of set-off against any subsequent call or calls.

In the event of the winding-up of any limited Company, the Court, if it thinks fit, may make to any director or manager of such Company whose liability is unlimited the same allowance by way of set-off

set-off as under this section it may make to a contributory where the Company is not limited.

Power of Court to make calls.

151. The Court may, at any time after making an order for winding-up a Company, and either before or after it has ascertained the sufficiency of the assets of the Company, make calls on, and order payment thereof by, all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves.

The Court may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same.

Power of Court to order payment into Bank.

152. The Court may order any contributory, purchaser or other person from whom money is due to the Company to pay the same into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, as the case may be, or any branch thereof respectively, to the account of the official liquidator instead of to the official liquidator; and such order may be enforced in the same manner as if it had directed payment to the official liquidator.

Regulation of account with Court.

153. All monies, bills, hundís, notes and other securities paid and delivered into the Bank of Bengal, the Bank of Madras or the Bank of Bombay, or any branch thereof respectively, in the event of a Company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in, or investment and payment and delivery out, of the same as the Court may direct.

Provision in case of representative contributory not paying monies ordered.

154. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid by him, proceedings may be taken for administering the property of such deceased contributory, whether moveable

moveable or immoveable, or both, and of compelling payment thereout of the monies due.

Order conclusive evidence.

155. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order, be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons and in all proceedings whatsoever.

Court may exclude creditors not proving within certain time.

156. The Court may fix a certain day or certain days on or within which creditors of the Company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved.

Court to adjust rights of contributories.

157. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto.

Court to order costs.

158. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the Company of the costs, charges and expenses incurred in winding-up any Company in such order of priority as the Court thinks just.

Dissolution of Company.

159. When the affairs of the Company have been completely wound up, the Court shall make an order that the Company be dissolved from the date of such order, and the Company shall be dissolved accordingly.

Registrar to make minute of dissolution of Company.

160. Any order so made shall be reported by the official liquidator to the Registrar, who shall make a minute accordingly in his books of the dissolution of such Company.

Penalty for not reporting dissolution of Company.

161. If the official liquidator makes default in reporting to the Registrar, in the case of a Company being wound up by the Court, the order that the Company be dissolved, he shall be liable to a penalty not exceeding one hundred rupees for every day during which he is so in default.

Extraordinary

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Extraordinary powers of Court.

162. The Court may, after it has made an order for winding-up the Company, summon before it any officer of the Company, or person known or suspected to have in his possession any of the estate or effects of the Company, or supposed to be indebted to the Company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the Company.

Power of Court to summon persons before it suspected of having property of Company.

If any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting and allowed by it), the Court may cause such person to be apprehended and brought before the Court for examination.

The Court may require any such officer or person to produce any documents in his custody or power relating to the Company. Nevertheless, in cases where any person claims any lien on documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding-up to determine all questions relating to such lien.

163. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before it in manner aforesaid concerning the affairs, dealings, estate or effects of the Company, and may reduce into writing the answers of every such person, and require him to subscribe the same.

Examination of parties by Court.

164. The Court may, at any time before or after it has made an order for winding-up a Company, upon proof being given that there is probable cause for believing that any contributory to such Company is about to quit British India or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the Company, cause such contributory to be arrested, and his books,

Power to arrest contributory about to abscond or to remove or conceal any of his property.

books, papers, monies, securities for monies, goods and chattels to be seized, and him and them to be safely kept until such time as the Court may order.

Powers of Court cumulative.

165. Any powers by this Act conferred on the Court shall be deemed to be in addition to, and not in restriction of, any other powers subsisting of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the Company, for the recovery of any call or other sums due from such contributory or debtor, or his estate; and such proceedings may be instituted accordingly.

Enforcement of, and Appeal from, Orders.

Power to enforce orders.

166. All orders made by a Court under this Act may be enforced in the same manner in which decrees of such Court made in any suit pending therein may be enforced.

Order made in any Court to be enforced by other Courts.

167. Any order made by a Court for or in the course of the winding-up of a Company under this Act shall be enforced in any part of British India, other than that in which such Court is situate, in the Court that would have had jurisdiction in respect of such Company if the registered office of the Company had been situate in such other part, and in the same manner in all respects as if such order had been made by the Court that is hereby required to enforce the same.

Mode of dealing with orders to be enforced by other Courts.

168. Where any order or decree made by one Court is required to be enforced by another Court as hereinbefore provided, a certified copy of the order or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such certified copy shall be sufficient evidence of such order or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order or decree, in the same manner as if it were the order or decree of the Court enforcing the same.

169. Re-hearings

169. Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding-up of a Company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such re-hearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made, in manner in which notices of appeal are ordinarily given under the Code of Civil Procedure, unless such time is extended by the Court of appeal.

Appeals from orders.

170. In all proceedings under this Part of this Act, every Court, Judge and person judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of any other Court, and also of the official seal of any other Court, when such seal is appended to any document made, issued or signed under the provisions of this Part of this Act, or any official copy thereof.

Judicial notice to be taken of signature of officers.

171. The Judges of the District Courts, who sit at places more than twenty English miles from the usual place of sitting of the High Court, shall be Commissioners for the purpose of taking evidence under this Act in cases where any Company is wound up in a High Court; and it shall be lawful for the High Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed Commissioner, although such Commissioner is out of the jurisdiction of the Court that made the order or decree for winding-up the Company.

Special Commissioners for receiving evidence.

Every such Commissioner shall, in addition to any power of summoning and examining witnesses and requiring the production or delivery of documents and certifying or punishing defaults by witnesses, which he might lawfully exercise as a Judge of a District Court, have, in the matter so referred to him, all the

same

same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding-up the Company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Affidavits, &c., may be sworn in British India, Great Britain or Ireland, or abroad, before any competent Court or person.

172. If any affidavit, affirmation or declaration, required to be sworn or made under the provisions or for the purposes of this Part of this Act, be lawfully sworn or made in British India, or in Great Britain or Ireland, or in any colony, island, plantation or place under the dominion of Her Majesty in foreign parts, before any Court, Judge or person lawfully authorized to take and receive affidavits, affirmations or declarations, or before any of Her Majesty's Consuls or Vice-Consuls in any foreign parts out of Her Majesty's dominions, all Courts, Judges, Justices, Commissioners and persons acting judicially in British India shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, Judge, person, Consul or Vice Consul, attached, appended or subscribed to any such affidavit, affirmation or declaration, or to any other document to be used for the purposes of this Part of this Act.

Voluntary Winding-up of Company.

Circumstances under which Company may be wound up voluntarily.

173. A Company under this Act may be wound up voluntarily—

(*a*) whenever the period, if any, fixed for the duration of the Company by the articles of association expires, or whenever the event, if any, occurs upon the occurrence of which it is provided by the articles of association that the Company is to be dissolved, and the Company in general meeting has passed a resolution requiring the Company to be wound up voluntarily;

(*b*) whenever the Company has passed a special resolution requiring the Company to be wound up voluntarily;

(*c*) whenever

(*c*) whenever the Company has passed an extraordinary resolution to the effect that it has been proved to its satisfaction that the Company cannot by reason of its liabilities continue its business, and that it is advisable to wind up the same:

For the purposes of this Act any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution as hereinbefore defined.

Commencement of voluntary winding-up.

174. A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing such winding-up. When the winding-up is in pursuance of a special resolution, it shall be deemed to commence at the time of the passing, under section seventy-seven, of the confirmatory resolution.

Effect of voluntary winding-up on status of Company.

175. Whenever a Company is wound up voluntarily, the Company shall, from the date of the commencement of such winding-up, cease to carry on its business except in so far as may be required for the beneficial winding-up thereof; and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the Company, taking place after the commencement of such winding-up, shall be void; but its corporate state and all its corporate powers shall, notwithstanding that its regulations otherwise provide, continue until the affairs of the Company are wound up.

Notice of resolution to wind up voluntarily.

176. Notice of any special resolution or extraordinary resolution passed for winding-up a Company voluntarily shall be given by advertisement in the local official Gazette, and also in some newspaper (if any) circulating in the place where the registered office of the Company is situate.

Consequence of voluntary winding-up.

177. The following consequences shall ensue upon the voluntary winding-up of a Company:—

(*a*) the assets of the Company shall be applied in satisfaction of its liabilities *pari passu* as they exist at the commencement of the winding-up, and subject thereto shall, unless the regulations of the Company otherwise

otherwise provide, be distributed amongst the members according to their rights and interests in the Company :

(*b*) liquidators shall be appointed for the purpose of winding-up the affairs of the Company and distributing the assets :

(*c*) the Company in general meeting shall appoint such persons as it thinks fit to be liquidators, and may fix the remuneration to be paid to them :

(*d*) if one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him :

(*e*) upon the appointment of liquidators, all the powers of the directors shall cease, except in so far as the Company in general meeting, or the liquidators, may sanction the continuance of such powers :

(*f*) when several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two :

(*g*) the liquidators may, without the sanction of the Court, exercise all powers by this Act given to the official liquidators :

(*h*) the liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the Company, and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories :

(*i*) the liquidators may, at any time after the passing of the resolution for winding-up the Company, and before they have ascertained the sufficiency of the assets of the Company, call on all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, to pay all or any sums they deem necessary to satisfy the debts and liabilities of the Company, and the costs, charges and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves ;

themselves; and the liquidators may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same:

(*j*) the liquidators shall pay the debts of the Company, and adjust the rights of the contributories amongst themselves.

Effect of winding-up on share-capital of Company limited by guarantee.

178. Where a Company limited by guarantee and having a capital divided into shares is being wound up voluntarily, any share-capital that may not have been called up shall be deemed to be assets of the Company, and to be a debt due from each member to the Company to the extent of any sums that may be unpaid on any shares held by him, and payable at such time as may be appointed by the liquidators.

Power of Company to delegate authority to appoint liquidators.

179. A Company about to be wound up voluntarily, or in the course of being wound up voluntarily, may, by an extraordinary resolution, delegate to its creditors, or to any committee of its creditors, the power of appointing liquidators or any of them, and supplying any vacancies in the appointment of liquidators, or may, by a like resolution, enter into any arrangement with respect to the powers to be exercised by the liquidators and the manner in which they are to be exercised.

Any act done by the creditors in pursuance of such delegated power shall have the same effect as if it had been done by the Company.

Arrangement when binding on creditors.

180. Any arrangement which a Company about to be wound up voluntarily, or in the course of being wound up voluntarily, shall have entered into with its creditors shall be binding on the Company if sanctioned by an extraordinary resolution, and on the creditors if acceded to by three-fourths in number and value of the creditors, subject to such right of appeal as is hereinafter mentioned.

Power of creditor or contributory to appeal.

181. Any creditor or contributory of a Company that has in manner aforesaid entered into any arrangement with its creditors may, within three weeks from the

the date of the completion of such arrangement, appeal to the Court against such arrangement, and the Court may thereupon, as it thinks just, amend, vary or confirm the same.

Power for liquidators or contributories in voluntary winding-up to apply to Court.

182. Where a Company is being wound up voluntarily, the liquidators or any contributory of the Company may apply to the Court to determine any question arising in the matter of such winding-up, or to exercise, as respects the enforcing of calls or in respect of any other matter, all or any of the powers which the Court might exercise if the Company were being wound up by the Court. Any such application may be made by motion. The Court, if satisfied that the determination of such question or the required exercise of power will be just and beneficial, may accede, wholly or partially, to such application, on such terms and subject to such conditions as the Court thinks fit, or it may make such other order or decree on such application as the Court thinks just.

Power of liquidators to call general meeting.

183. Where a Company is being wound up voluntarily, the liquidators may, from time to time, during the continuance of such winding-up, summon general meetings of the Company for the purpose of obtaining the sanction of the Company by special resolution or extraordinary resolution, or for any other purposes they think fit.

In the event of the winding-up continuing for more than one year, the liquidators shall summon a general meeting of the Company at the end of the first year and of each succeeding year from the commencement of the winding-up, or as soon thereafter as may be convenient, and shall lay before such meeting an account showing their acts and dealings, and the manner in which the winding-up has been conducted, during the preceding year.

Power to fill up vacancy in office of liquidators.

184. If any vacancy occurs in the office of liquidators appointed by the Company, by death, resignation or otherwise, the Company in general meeting may, subject to any arrangement they may have entered into with their creditors, fill up such vacancy; and

and a general meeting for the purpose of filling up such vacancy may be convened by the continuing liquidators, if any, or by any contributory of the Company, and shall be deemed to have been duly held if held in manner prescribed by the regulations of the Company, or in such other manner as may, on application by the continuing liquidator, if any, or by any contributory of the Company, be determined by the Court.

Power of Court to appoint liquidators.

185. If, from any cause whatever, there is no liquidator acting in the case of a voluntary winding-up, the Court may, on the application of a contributory, appoint a liquidator or liquidators. The Court may also, on due cause shown, remove any liquidator and appoint another liquidator to act in the matter of a voluntary winding-up.

Liquidators on conclusion of winding-up to make up an account.

186. As soon as the affairs of the Company are fully wound up, the liquidators shall make up an account showing the manner in which such winding-up has been conducted and the property of the Company disposed of : and thereupon they shall call a general meeting of the Company for the purpose of having the account laid before them, and hearing any explanation that may be given by the liquidators.

The meeting shall be called by advertisement, specifying the time, place and object of such meeting, and such advertisement shall be published one month at least previously to the meeting in the manner specified in section one hundred and seventy-six.

Liquidators to report meeting to Registrar.

187. The liquidators shall make a return to the Registrar of such meeting having been held, and of the date at which the same was held ; and, on the expiration of three months from the date of the registration of such return, the Company shall be deemed to be dissolved.

If the liquidators make default in making such return to the Registrar, they shall incur a penalty not exceeding fifty rupees for every day during which such default continues.

188. All

Costs of voluntary liquidation.

188. All costs, charges and expenses properly incurred in the voluntary winding-up of a Company, including the remuneration of the liquidators, shall be payable out of the assets of the Company in priority to all other claims.

Saving of rights of creditors.

189. The voluntary winding-up of a Company shall not be a bar to the right of any creditor of such Company to have the same wound up by the Court, if the Court is of opinion that the rights of such creditor will be prejudiced by a voluntary winding-up.

Power of Court to adopt proceedings of voluntary winding-up.

190. Where a Company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the Company to be wound-up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding-up.

Winding-up subject to the Supervision of the Court.

Power of Court, on application, to direct winding-up subject to supervision.

191. When a resolution has been passed by a Company to wind up voluntarily, the Court may make an order directing that the voluntary winding-up shall continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories or others to apply to the Court, and generally upon such terms and subject to such conditions, as the Court thinks just.

Petition for winding-up subject to supervision.

192. A petition praying wholly or in part that a voluntary winding-up shall continue, but subject to the supervision of the Court, and which winding-up is hereinafter referred to as a winding-up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits, be deemed to be a petition for winding-up the Company by the Court.

Court may have regard to wishes of creditors.

193. The Court may, in determining whether a Company is to be wound up altogether by the Court, or subject to the supervision of the Court, in the appointment

appointment of a liquidator or of liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court.

In the case of creditors, regard shall be had to the value of the debts due to each creditor, and, in the case of contributories, to the number of votes conferred on each contributory by the regulations of the Company.

Power to Court to appoint additional liquidator in winding-up subject to supervision.

194. Where any order is made by the Court for a winding-up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator.

Any liquidator so appointed by the Court shall have the same powers, be subject to the same obligations and in all respects stand in the same position, as if he had been appointed by the Company.

The Court may, from time to time, remove any liquidator so appointed by the Court, and fill up any vacancy occasioned by such removal, or by death or resignation.

Effect of order of Court for winding-up subject to supervision.

195. Where an order is made for a winding-up subject to the supervision of the Court, the liquidator appointed to conduct such winding-up may, subject to any restrictions imposed by the Court, exercise all his powers, without the sanction or intervention of the Court, in the same manner as if the Company were being wound up altogether voluntarily.

Save as aforesaid, any order made by the Court for a winding-up subject to the supervision of the Court shall for all purposes, including the staying of suits and other proceedings, be deemed to be an order of the Court for winding-up the Company by the Court, and shall confer full authority on the Court to make

make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding-up the Company altogether by the Court.

In the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the official liquidators, the expression "official liquidator" shall be deemed to mean the liquidator conducting the winding-up subject to the supervision of the Court.

Appointment in certain cases of voluntary liquidators to office of official liquidators.

196. Where an order has been made for the winding-up of a Company subject to the supervision of the Court, and such order is afterwards superseded by an order directing the Company to be wound up compulsorily, the Court may, in such last-mentioned order or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other person, to be official liquidators.

Supplemental Provisions.

Dispositions after commencement of winding-up avoided.

197. Where any Company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property of the Company, and every transfer of shares or alteration in the status of the members of the Company, made between the commencement of the winding-up and the order for winding-up, shall, unless the Court otherwise orders, be void.

Books of Company to be evidence.

198. Where any Company is being wound up, all books, accounts and documents of the Company and of the liquidators shall, as between the contributories of the Company, be *primâ facie* evidence of the truth of all matters purporting to be therein recorded.

Disposal of books, accounts and documents of Company.

199. Where any Company has been wound up under this Act and is about to be dissolved, the books, accounts and documents of the Company and of the liquidator may be disposed of in the following way; that is to say, where the Company has been wound up by, or subject to the supervision of, the Court, in such way as the Court directs, and, where the Company

pany has been wound up voluntarily, in such way as the Company by an extraordinary resolution directs.

But, after the lapse of five years from the date of such dissolution, no responsibility shall rest on the Company or the liquidators, or any one to whom the custody of such books, accounts and documents has been committed, by reason that the same or any of them cannot be made forthcoming to any party or parties claiming to be interested therein.

Inspection of books.

200. Where an order has been made for winding-up a Company by the Court or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the Company of its books and papers as the Court thinks just, and any books and papers in the possession of the Company may be inspected by creditors or contributories in conformity with the order of the Court, but not further or otherwise.

General scheme of liquidation may be sanctioned.

201. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidator may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, whereby the Company may be rendered liable.

Power to compromise.

202. The liquidator may, with the sanction of the Court where the Company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution of the Company where the Company is being wound up altogether voluntarily, compromise all calls and liabilities to calls, debts and liabilities capable of resulting in debts, and all claims, whether present or future, subsisting or supposed to subsist between the Company and any contributory or alleged contributory, or other debtor or person apprehending liability to the Company,

Company, and all questions in any way relating to or affecting the assets of the Company or the winding-up of the Company, generally upon such terms as may be agreed upon, with power for the liquidator to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts or liabilities.

Where compromise proposed, Court may order a meeting of creditors, &c., to decide as to such compromise.

203. Where any compromise or arrangement shall be proposed between a Company which is, at the commencement of this Act or afterwards, in the course of being wound up either voluntarily or by or under the supervision of the Court, and the creditors of such Company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct; and, if a majority in number, representing three-fourths in value, of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said Company.

Power for liquidators to accept shares, &c., as a consideration for sale of property of Company.

204. Where any Company is proposed to be, or is in the course of being, wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another Company, the liquidators of the first-mentioned Company may, with the sanction of a special resolution of the Company by whom they were appointed, conferring either a general authority on the liquidators or an authority in respect of any particular arrangement, receive, in compensation or part compensation for such transfer or sale, shares, debentures, policies or other like interests in such other Company, for the purpose of distribution amongst the members of the Company being wound up, or may enter into any other

other arrangement whereby the members of the Company being wound up may, in lieu of receiving cash, shares, debentures, policies or other like interests, or in addition thereto, participate in the profits of, or receive any other benefit from, the purchasing Company.

Any sale made, or arrangement entered into, by the liquidator in pursuance of this section shall be binding on the members of the Company being wound up; subject to this proviso that, if any member of the Company being wound up, who has not voted in favour of the special resolution passed by the Company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the Company not later than seven days after the date of the meeting at which such special resolution was passed, such dissentient member may, by writing addressed and left as last aforesaid, require the liquidator to do one of the following things as the liquidator may prefer (that is to say):—either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned; such purchase-money to be paid before the Company is dissolved, and to be raised by the liquidator in such manner as may be determined by special resolution.

No special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to, or concurrently with, any resolution for winding-up the Company or for appointing liquidators; but, if an order be made within a year for winding-up the Company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court.

Mode of determining price.

205. The price to be paid for the purchase of the interest of any dissentient member may be determined by agreement. If the parties dispute about the same, such

such dispute shall be settled by arbitration under the provisions next hereinafter contained.

Appointment of arbitrator when questions are to be determined by arbitration.

206. When any dispute so directed to be settled by arbitration has arisen, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other party, shall by writing under his hand nominate and appoint an arbitrator to whom such dispute shall be referred.

After any such appointment has been made, neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as such revocation.

If for the space of fourteen days after any such dispute has arisen, and after a request in writing has been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters in dispute; and in such case the award or determination of such single arbitrator shall be final.

Vacancy of arbitrator to be supplied.

207. If, before the matters so referred are determined, any arbitrator appointed by either party die, or become incapable or refuse, or for seven days neglect, to act as arbitrator, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place; and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so, the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death, refusal or disability as aforesaid.

Appointment of umpire.

208. Where more arbitrators than one have been appointed, they shall, before entering upon the matters referred to them, nominate and appoint by writing under

under their hands an umpire to decide on any such matters on which they shall differ.

If such umpire die, or refuse, or for seven days neglect, to act, they shall forthwith, after such death, refusal or neglect, appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Power of arbitrators to call for books, &c.

209. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath.

Costs to be in discretion of arbitrators.

210. The costs of and attending every such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators or their umpire, as the case may be.

Submission to arbitration may be filed in Court.

211. On the application of either of the parties, the submission to any such arbitration may be filed in the Court, and an order of reference may be made thereon; and the provisions of the Code of Civil Procedure shall, so far as the same are applicable, apply to every such order and to all proceedings thereunder.

Certain attachments, distresses and executions to be void.

212. Where any Company is being wound up by the Court or subject to the supervision of the Court, any attachment, distress or execution put in force, without the leave of the Court, against the estate or effects of the Company after the commencement of the winding-up shall be void.

Nothing in this section applies to proceedings by the Government.

Fraudulent preference.

213. Every conveyance, mortgage, delivery of goods, payment, execution or other act relating to property, which would, if made or done by, or against any individual trader, be deemed, in the event of his insolvency, to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any Company, be deemed, in the event of such Company being

ing wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such Company, and shall be invalid accordingly.

For the purposes of this section, the making of an application for winding-up a Company shall, in the case of a Company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding-up the Company shall, in the case of a voluntary winding-up, be deemed to correspond with the act of insolvency in the case of an individual trader; and any conveyance or assignment made by any Company formed under this Act, of all its estate and effects to trustees, for the benefit of all its creditors, shall be void.

Power of Court to assess damages against delinquent directors and officers.

214. Where, in the course of the winding-up of any Company under this Act, it appears that any past or present director, manager, official or other liquidator, or any officer of such Company, has misapplied or retained in his own hands, or become liable or accountable for, any monies of the Company, or been guilty of any misfeasance or breach of trust in relation to the Company, the Court may, on the application of any liquidator or of any creditor or contributory of the Company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager or other officer, and compel him to repay any monies so misapplied or retained, or for which such officer has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the Company by way of compensation in respect of such misapplication, retainer, misfeasance or breach of trust, as the Court thinks just.

Explanation I.—The banker of a Company is not, as such, an officer within the meaning of this section.

Explanation II.—Proceedings cannot be taken under this section against the representatives of a deceased officer.

215. If

215. If any director, officer or contributory of any Company wound up under this Act destroys, mutilates, alters, falsifies or fraudulently secretes any books, papers, writings or securities, or makes, or is privy to the making of, any false or fraudulent entry in any register, book of account or other document belonging to the Company, with intent to defraud or deceive any person, every person so offending shall be punished with imprisonment for a term which may extend to two years, and shall also be liable to fine which may extend to five hundred rupees.

Penalty on falsification of books.

216. Where any order is made for winding-up a Company by the Court or subject to the supervision of the Court, if it appear in the course of such winding-up that any past or present director, manager, officer or member of such Company has been guilty of any offence in relation to the Company for which he is criminally responsible, the Court may, on the application of any person interested in such winding-up or of its own motion, direct the official liquidators or the liquidators (as the case may be) to institute a prosecution for such offence, and may order the costs and expenses of such prosecution to be paid out of the assets of the Company.

Prosecution of delinquent directors in case of winding-up by Court.

217. If any person, upon any examination upon oath authorized under this Act, or in any affidavit, deposition or solemn affirmation, in or about the winding-up of any Company under this Act, or otherwise in or about any matter arising under this Act, intentionally gives false evidence, he shall be liable to imprisonment for a term which may extend to seven years and shall also be liable to fine.

Penalty for false evidence.

218. Where the High Court makes an order for winding-up a Company under this Act, it may, if it thinks fit, direct all subsequent proceedings to be had in a District Court; and thereupon such District Court shall, for the purpose of winding-up the Company, be deemed to be "the Court" within the meaning of this Act, and shall have, for the purposes of such winding-up, all the jurisdiction and powers of the High Court.

Winding-up may be referred to District Court.

219. If

Transfer of winding-up from one District Court to another.

219. If during the progress of a winding-up in a District Court it is made to appear to the High Court that the same could be more conveniently prosecuted in any other District Court, the High Court may transfer the same to such other Court, and thereupon the winding-up shall proceed in such other District Court.

PART V.

REGISTRATION-OFFICE.

Constitution of registration-office.

220. The registration of Companies under this Act shall be conducted as follows (that is to say) :—

(*a*) The Local Government may, after the sanction of the Governor General in Council to the creation of any such offices shall have been obtained, from time to time appoint such Registrars, Assistant Registrars, clerks and servants as it may think necessary for the registration of Companies under this Act, and remove them at pleasure :

(*b*) The Local Government may make such regulations as it thinks fit with respect to the duties to be performed by any such Registrars, Assistant Registrars, clerks and servants as aforesaid :

(*c*) The Local Government may from time to time determine the places at which offices for the registration of Companies are to be established, so that there be at all times maintained in each of the towns of Calcutta, Madras and Bombay at least one such office, and that no Company shall be registered except at an office within that part of British India in which, by the memorandum of association, the registered office of the Company is declared to be established :

(*d*) The Local Government may from time to time direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of Companies :

(*e*) Every person may inspect the documents kept by the Registrar of joint stock Companies. There shall

shall be paid for such inspection such fees as may be directed by the Local Government, not exceeding one rupee for each inspection. Any person may require a certificate of the incorporation of any Company, or a copy or extract of any other document or any part of any other document, to be certified by the Registrar. There shall be paid for such certificate of incorporation, certified copy or extract, such fees as the Local Government may direct, not exceeding three rupees for the certificate of incorporation, and not exceeding two annas for each hundred words of such copy or extract:

(*f*) The existing Registrar, Assistant Registrars, clerks and other officers and servants in the office for the registration of joint stock Companies shall, during the pleasure of the Local Government, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Local Government:

(*g*) There shall be paid to any Registrar, Assistant Registrar, clerk or servant that may hereafter be employed in the registration of joint stock Companies such salaries as the Local Government may, with the sanction of the Governor General in Council, direct:

(*h*) Whenever any act is herein directed to be done to or by the Registrar of joint stock Companies, such act shall, until the Local Government otherwise directs, be done to or by the existing Registrar of joint stock Companies, or in his absence to or by such person as the Local Government may for the time being authorize. But, in the event of the Local Government altering the constitution of the existing registry-office, such act shall be done to or by such officer or officers, and at such place or places with reference to the local situation of the registered offices of the Companies to be registered, as the Local Government may appoint.

PART VI.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT STOCK COMPANIES ACTS.

Application of Act to Companies formed under Act XIX of 1857 or VII of 1860.

221. Subject as hereinafter mentioned, this Act, with the exception of Table A in the first schedule, shall apply to Companies formed and registered under Act No. XIX of 1857 and Act No. VII of 1860, or either of them, in the same manner, in the case of a limited Company, as if such Company had been formed and registered under this Act as a Company limited by shares, and, in the case of Company other than a limited Company, as if such Company had been formed and registered as an unlimited Company under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them, and the power of altering regulations by special resolution given by this Act shall, in the case of any Company formed and registered under the said Acts or either of them, extend to altering any provisions contained in the table marked B annexed to Act No. XIX of 1857, and shall also, in the case of an unlimited Company formed and registered as last aforesaid, extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding that such regulations are contained in the memorandum of association.

Application of Act to Companies registered under Act XIX of 1857 or VII of 1860.

222. This Act shall apply to Companies registered but not formed under the said Acts or either of them, in the same manner as it is hereinafter declared to apply to Companies registered but not formed under this Act; with this qualification, that, wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such Companies were respectively registered under the said Acts or either of them.

Mode of transferring shares.

223. Any Company registered under the said Acts or either of them may cause its shares to be transferred

ferred in manner hitherto in use, or in such other manner as the Company may direct.

PART VII.

COMPANIES AUTHORIZED TO REGISTER UNDER THIS ACT.

Companies capable of being registered.

224. With the exceptions made in the next following section and subject to the regulations therein contained, every Company existing at the time of the commencement of this Act, including any Company registered under either of the said Acts, consisting of seven or more members, and any Company hereafter formed in pursuance of any Act of Parliament or Act of the Governor General in Council other than this Act, or of Letters Patent, or being otherwise duly constituted by law, and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited Company, or a Company limited by shares, or a Company limited by guarantee, and no such registration shall be invalid by reason that it has taken place with a view to the Company being wound up.

Regulations as to registration of existing Companies.

225. The following regulations shall be observed with respect to the registration of Companies under this Part of this Act (that is to say):—

(*a*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, and not being a joint stock Company as hereinafter defined, shall register under this Act in pursuance of this Part thereof:

(*b*) No Company having the liability of its members limited by Act of Parliament or Act of the Governor General in Council other than this Act, or by Letters Patent, shall register under this Act in pursuance of this Part thereof as an unlimited Company, or as a Company limited by guarantee:

(*c*) No life-assurance Company existing at the time of the commencement of this Act, and no Company that is not a joint stock Company as hereinafter defined,

defined, shall in pursuance of this Part of this Act register under this Act as a Company limited by shares:

(*d*) No Company shall register under this Act in pursuance of this Part thereof unless an assent to its so registering is given by a majority of such of its members as may be present personally, or by proxy in cases where proxies are allowed by the regulations of the Company, at some general meeting summoned for the purpose:

(*e*) Where a Company, not having the liability of its members limited by Act of Parliament, or Act of the Governor General in Council, or by Letters Patent, is about to register as a limited Company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

(*f*) Where a Company is about to register as a Company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceased to be a member, and of the costs, charges and expenses of winding-up the Company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding a specified amount.

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the Company of which he is a member.

Definition of "joint stock Company."

226. For the purposes of this Part of this Act, so far as the same relates to the description of Companies empowered to register as Companies limited by shares, a joint stock Company shall be deemed to be

be a Company having a permanent paid up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such Company, when registered with limited liability under this Act, shall be deemed to be a Company limited by shares.

Requisitions for registration by Companies.

227. Previously to the registration, in pursuance of this part of this Act, of any joint stock Company, there shall be delivered to the Registrar the following documents (that is to say) :—

(*a*) A list showing the names, addresses and occupations of all persons who, on a day named in such list and not being more than six clear days before the day of registration, were members of such Company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(*b*) A copy of any Act of Parliament or Act of the Governor General in Council, Royal Charter, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the Company:

(*c*) If any such joint stock Company is intended to be registered as a limited Company, the above list and copy shall be accompanied by a statement specifying the following particulars (that is to say) :—

the nominal capital of the Company and the number of shares into which it is divided;

the number of shares taken and the amount paid on each share;

the name of the Company, with the addition of the word "limited" as the last word thereof;

with the addition, in the case of a Company intended to be registered as a Company limited by guarantee,

guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing Company not being a joint stock Company.

228. Previously to the registration in pursuance of this Part of this Act of any Company not being a joint stock Company, there shall be delivered to the Registrar a list showing the names, addresses and occupations of the directors or other managers (if any) of the Company, also a copy of any Act of Parliament, Act of the Governor General in Council, Letters Patent, deed of settlement, contract of copartnery or other instrument constituting or regulating the Company, with the addition, in the case of a Company intended to be registered as a Company limited by guarantee, of the resolution declaring the amount of the guarantee.

Power for existing Company to register amount of stock instead of shares.

229. Where a joint stock Company authorized to register under this Act has had the whole or any portion of its capital converted into stock, such Company shall, as to the capital so converted, instead of delivering to the Registrar a statement of shares, deliver to the Registrar a statement of the amount of stock belonging to the Company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration.

Authentication of statements of existing Companies.

230. The lists of members and directors and any other particulars relating to the Company hereby required to be delivered to the Registrar shall be verified by declaration of the directors of the Company delivering the same, or any two of them, or of any two other principal officers of the Company, made before a Justice of the Peace or a District Judge.

Registrar may require evidence as to nature of Company.

231. The Registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing Company is or not a joint stock Company as hereinbefore defined.

On registration of banking Company with limited liability, notice to be given to customers.

232. Every banking Company existing at the date of the passing of this Act which registers itself as a limited Company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register

register the same to every person and partnership firm having a banking account with the Company.

Such notice shall be given either by delivering the same to such person or firm, or leaving the same, or putting the same into the post addressed to him or them, at such address as shall have been last communicated or otherwise become known as his or their address to or by the Company.

In case the Company omits to give any such notice as is hereinbefore required to be given, then, as between the Company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation.

Exemption of certain Companies from payment of fees.

233. No fees shall be charged in respect of the registration in pursuance of this Part of this Act of any Company in cases where such Company is not registered as a limited Company, or where, previously to its being registered as a limited Company, the liability of the shareholders was limited by some Act of Parliament, or Act of the Governor General in Council, or by Letters Patent.

Company to change name.

234. Any Company authorized by this Part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name by adding thereto the word "limited."

Certificate of registration of existing Companies.

235. Upon compliance with the requisitions in this Part of this Act contained with respect to registration, and on payment of such fees, if any, as are payable under the tables marked B and C in the first schedule hereto, the Registrar shall certify under his hand that the Company so applying for registration is incorporated as a Company under this Act, and, in the case of a limited Company, that it is limited; and thereupon such Company shall be incorporated, and shall have perpetual succession and a common seal.

236. A

Certificate to be evidence of compliance with Act.

236. A certificate of incorporation given at any time to any Company registered in pursuance of this Part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the Company is authorized to be registered under this Act as a limited or unlimited Company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the Company is incorporated under this Act.

Transfer of property to Company.

237. All such property, moveable and immoveable, including all interests and rights in, to and out of property, moveable and immoveable, and including obligations and actionable claims, as may belong to or be vested in the Company at the date of its registration under this Act, shall, on registration, pass to and vest in the Company as incorporated under this Act for all the estate and interest of the Company therein.

Registration under this Act not to affect obligations incurred previously to registration.

238. The registration in pursuance of this Part of this Act of any Company shall not affect or prejudice the liability of such Company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with or on behalf of, such Company previously to such registration.

Continuation of existing suits.

239. All such suits and other legal proceedings as may at the time of the registration of any Company registered in pursuance of this Part of this Act have been commenced by or against such Company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place. Nevertheless, execution shall not issue against the effects of any individual member of such Company upon any decree or order obtained in any suit or proceeding so commenced as aforesaid; but, in the event of the property and effects of the Company being insufficient to satisfy such decree or order, an order may be obtained for winding-up the Company.

240. When

240. When a Company is registered under this Act in pursuance of this Part thereof, all provisions contained in any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company, including, in the case of a Company registered as a Company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the Company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions of this Act shall apply to such Company and the members, contributories and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following (that is to say):— Effect of registration under Act.

(*a*) That table A in the first schedule to this Act shall not, unless adopted by special resolution, apply to any Company registered under this Act in pursuance of this Part thereof:

(*b*) That the provisions of this Act relating to the numbering of shares shall not apply to any joint stock Company whose shares are not numbered:

(*c*) That no Company shall have power to alter any provisions contained in any Act of Parliament, Act of the Legislative Council or Act of the Governor General in Council relating to the Company:

(*d*) That no Company shall have power, without the sanction of the Governor General in Council, to alter any provision contained in any Letters Patent relating to the Company:

(*e*) In the event of the Company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the Company contracted prior to registration, who is liable to pay or contribute to the payment of any debt or liability of the Company contracted prior to registration, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in

in respect of any such debt or liability, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company, so far as relates to such debts or liabilities as aforesaid. Every such contributory shall be liable to contribute to the assets of the Company, in the course of the winding-up, all sums due from him in respect of any such liability as aforesaid. In the event of the death or insolvency of any such contributory as last aforesaid, the provisions hereinbefore contained with respect to the representatives, heirs and devisees of deceased contributories, and with reference to the assignees of insolvent contributories, shall apply:

(*f*) Nothing herein contained shall authorize any Company to alter any such provisions contained in any deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company, as would, if such Company had originally been formed under this Act, have been contained in the memorandum of association, and are not authorized to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any Company registering under this Act in pursuance of this Part thereof by virtue of any Act of Parliament, Act of the Governor General in Council, deed of settlement, contract of copartnery, Letters Patent or other instrument constituting or regulating the Company.

Power of Court to restrain further proceedings.

241. The Court may, at any time after the presentation of a petition for winding-up a Company registered in pursuance of this Part of this Act, and before making an order for winding up the Company, upon the application of any creditor of the Company, restrain further proceedings in any suit or legal proceeding against any contributory of the Company as well as against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Order for winding-up Company.

242. Where an order has been made for winding-up a Company registered in pursuance of this Part of this Act, in addition to the provisions hereinbefore contained,

contained, it is hereby further provided that no suit or other legal proceeding shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding-up unregistered Companies.

243. Subject as hereinafter mentioned, any Partnership, Association or Company, except Railway Companies incorporated by Act of Parliament or Act of the Governor General in Council, consisting of more than seven members and not registered under this Act, and hereinafter included under the term "unregistered Company," may be wound up under this Act, and all the provisions of this Act with respect to winding-up shall apply to such Company, with the following exceptions and additions:—

(1) An unregistered Company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding-up, be deemed to be registered in that part of British India where its principal place of business is situate, or, if it has a principal place of business situate in more than one part of British India, then in each part of British India where it has a principal place of business. Moreover, the principal place of business of an unregistered Company, or (where it has a principal place of business situate in more than one part of British India) such one of its principal places of business as is situate in that part of British India in which proceedings are being instituted, shall, for all the purposes of the winding-up of such Company, be deemed to be the registered office of the Company:

(2) No unregistered Company shall be wound up under this Act voluntarily, or subject to the supervision of the Court:

(3) The

(3) The circumstances under which an unregistered Company may be wound up are as follows (that is to say) :—

(*a*) whenever the Company is dissolved or has ceased to carry on business, or is carrying on business only for the purpose of winding-up its affairs;

(*b*) whenever the Company is unable to pay its debts;

(*c*) whenever the Court is of opinion that it is just and equitable that the Company should be wound up:

(4) An unregistered Company shall, for the purposes of this Act, be deemed to be unable to pay its debts—

(*a*) whenever a creditor to whom the Company is indebted, by assignment or otherwise, in a sum exceeding five hundred rupees then due, has served on the Company, by leaving the same at the principal place of business of the Company or by delivering to the secretary or some director or principal officer of the Company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the Company to pay the sum so due, and the Company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor;

(*b*) whenever any suit or other proceeding has been instituted against any member of the Company for any debt or demand due or claimed to be due from the Company, or from him in his character of member of the Company, and notice in writing of the institution of such suit or other legal proceeding having been served upon the Company by leaving the same at the principal place of business of the Company, or by delivering it to the secretary or some director, manager or principal officer of the Company, or by otherwise serving the same in such manner as the

the Court may approve or direct, the Company has not, within ten days after service of such notice, paid, secured or compounded for such debt or demand, or procured such suit or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such suit or other legal proceeding, and against all costs, damages and expenses to be incurred by him by reason of the same;

(*c*) whenever execution or other process issued on a decree or order obtained in any Court in favour of any creditor in any proceeding instituted by such creditor against the Company, or any member thereof as such, or against any person authorized to be sued as nominal defendant on behalf of the Company, is returned unsatisfied;

(*d*) whenever it is otherwise proved to the satisfaction of the Court that the Company is unable to pay its debts.

Who to be deemed a contributory in the event of Company being wound up.

244. In the event of an unregistered Company being wound up, every person shall be deemed to be a contributory who is liable to pay or contribute to the payment of any debt or liability of the Company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges and expenses of winding-up the Company.

Every such contributory shall be liable to contribute to the assets of the Company in the course of the winding-up all sums due from him in respect of any such liability as aforesaid.

In the event of the death or insolvency of any contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs and devisees of a deceased contributory, and to the assignees of an insolvent contributory, shall apply.

Power of Court to restrain further proceedings.

245. The Court may, at any time after the making of an application for winding-up an unregistered Company, and before making an order for winding-up the Company, upon the application of any creditor of the

the Company, restrain further proceedings in any suit or proceeding against any contributory of the Company, or against the Company as hereinbefore provided, upon such terms as the Court thinks fit.

Effect of order for winding-up Company.

246. Where an order has been made for winding-up an unregistered Company, in addition to the provisions hereinbefore contained in the case of Companies formed under this Act, it is hereby further provided that no suit shall be commenced or proceeded with against any contributory of the Company in respect of any debt of the Company, except with the leave of the Court and subject to such terms as the Court may impose.

Provision in case of unregistered Company.

247. If any unregistered Company has no power to sue and be sued in a common name, or if, for any reason, it appears expedient, the Court may, by the order made for winding-up such Company or by any subsequent order, direct that all such property, moveable and immoveable, including all interests, claims and rights into and out of property, moveable and immoveable, and including actionable claims, as may belong to or be vested in the Company, or to or in any person or persons on trust for or on behalf of the Company, or any part of such property, is to vest in the official liquidator or official liquidators by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly, and the official liquidator or official liquidators may, in his or their official name or names, or in such name or names, and after giving such indemnity, as the Court directs, bring or defend any suits or other legal proceedings relating to any property vested in him or them, or any suits or other legal proceedings necessary to be brought or defended for the purposes of effectually winding-up the Company and recovering the property thereof.

Provisions of this Part of Act cumulative.

248. The provisions made by this Part of this Act with respect to unregistered Companies shall be deemed to be made in addition to, and not in restriction of, any provisions hereinbefore contained with respect to winding-up Companies by the Court.

The

The Court or official liquidator may, in addition to anything contained in this Part of this Act, exercise any powers or do any act in the case of unregistered Companies which might be exercised or done by it or him in winding-up Companies formed under this Act; but an unregistered Company shall not, except in the event of its being wound-up, be deemed to be a Company under this Act, and then only to the extent provided by this Part of this Act.

PART IX.

Miscellaneous Provisions.

Company not to buy its own shares.

249. No Company under this Act shall have power to buy its own shares.

Saving of existing proceedings for winding-up.

250. Where, previously to the commencement of this Act, an order has been made for winding-up a Company under the Indian Companies Act, 1866, or a resolution has been passed for winding-up a Company voluntarily, such Company shall be wound up in the same manner and with the same incidents as if this Act were not passed; and, for the purposes of such winding-up, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Saving of conveyances.

251. Where, previously to the commencement of this Act, any conveyance, mortgage-deed or other instrument has been made in pursuance of the Indian Companies Act, 1866, such instrument shall be of the same force as if this Act had not passed; and, for the purposes of such instrument, the Indian Companies Act, 1866, shall be deemed to remain in full force.

Cognizance of offences.

252. All offences under this Act may be tried by any Magistrate of the first class, unless the period of imprisonment to which the offender is liable exceeds that which such officer is competent to award under the law for the time being in force in the place in which he is employed. When the period of imprisonment provided by this Act exceeds the period that may be awarded by such officer, the offender shall be committed for trial before the Court of Session.

If

Punishment of offences committed within Presidency-towns.

If any offence which by this Act is declared to be punishable by any penalty is committed by any person within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, such offence shall be punishable upon summary conviction by any Presidency Magistrate of the place at which such Court is held.

Power to make orders as to costs.

253. Subject to the provisions hereinbefore contained, the Court may, in any proceedings under this Act, make such order as to costs as it thinks fit.

Power of High Court to make rules.

254. The High Court may from time to time make rules, consistent with this Act and with the Code of Civil Procedure, concerning the mode of proceeding to be had for winding-up a Company in such Court and in the Courts subordinate thereto, and for giving effect to the provisions hereinbefore contained as to the reduction of the capital and the sub-division of the shares of a Company.

Construction of "Registrar of Joint Stock Companies" in Act XXI of 1860.

255. In sections 1 and 18 of Act No. XXI of 1860 *(for the registration of Literary, Scientific and Charitable Societies)*, the words "Registrar of Joint Stock Companies" shall be construed to mean Registrar of Joint Stock Companies under this Act or any Act for the time being in force.

Act not to apply to Bank of Bengal, Madras or Bombay.

256. Save as provided in sections one hundred and fifty-two and one hundred and fifty-three, nothing in this Act shall be deemed to apply to the Bank of Bengal, the Bank of Madras and the Bank of Bombay.

FIRST SCHEDULE.

TABLE A.

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES.

Shares.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every

(2.) Every member shall, on payment of eight annas or such less sum as the Company in general meeting may prescribe, be entitled to a certificate under the common seal of the Company, specifying the share or shares held by him, and the amount paid up thereon.

(3.) If such certificate is worn out or lost, it may be renewed, on payment of eight annas or such less sum as the Company in general meeting may prescribe.

Calls on Shares.

(4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call; and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors.

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive, from any member willing to advance the same, all or any part of the monies due upon the shares held by him beyond the sums actually called for; and, upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the Company may pay interest at such rate as the member paying such sum in advance and the directors agree upon.

Transfers of Shares.

(8.) The instrument of transfer of any share in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register-book in respect thereof.

(9.) Shares in the Company shall be transferred in the following form:—

I, *A B*, of , in consideration of the sum of rupees paid to me by *C D* of , do hereby transfer to the said *C D* the share (*or* shares) numbered standing in my name in the books of the Company,

Company, to hold unto the said *C D*, his executors, administrators and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said *C D*, do hereby agree to take the said share (*or* shares) subject to the same conditions. As witness our hands the day of

(10.) The Company may decline to register any transfer of shares made by a member who is indebted to them.

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of Shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognized by the Company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may, from time to time, be required by the Company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share.

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16). The instrument of transfer shall be presented to the Company, together with such evidence as the directors may require to prove the title of the transferee, and thereupon the Company shall register the transferee as a member.

Forfeiture of Shares.

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him requiring him to pay such call together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day on or before which such call and all interest and expenses that have accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either

either the registered office of the Company or some other place at which calls of the Company are usually made payable. The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has been given may at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the Company, and may be disposed of in such manner as the Company in general meeting thinks fit.

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the Company all calls owing upon such shares at the time of the forfeiture.

(22.) A solemn declaration in writing, made before a Magistrate, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated as against all persons entitled to such share, and such declaration and the receipt of the Company for the price of such share shall constitute a good title to such share, and a certificate of proprietorship shall be delivered to the purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase, and he shall not be bound to see to the application of the purchase-money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of Shares into Stock.

(23.) The directors may, with the sanction of the Company previously given in general meeting, convert any paid up shares into stock.

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interest, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the Company may be transferred, or as near thereto as circumstances admit.

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the Company according to the amount of their respective interests in such stock; and such interests shall, in proportion to the amount thereof, confer on the holders thereof, respectively, the same privileges and advantages for

for the purpose of voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the Company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages.

Increase in Capital.

(26.) The directors may, with the sanction of a special resolution of the Company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the Company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them, and such offer shall be made by notice specifying the number of shares to which the member is entitled and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the Company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions, with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General Meetings.

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the Company, and at such place, as the directors may determine.

(30.) Subsequent general meetings shall be held, once at the least in every year, at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(32.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by not less than one-fifth

fifth in number of the members of the Company, convene an extraordinary general meeting.

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting.

Proceedings at General Meeting.

(35.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and in case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting.; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, and the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(37.) No business shall be transacted at any general meeting, except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business. Such quorum shall be ascertained as follows, that is to say:—If the persons who have taken shares in the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty.

(38.) If, within one hour from the time appointed for the meeting, a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if, at such adjourned meeting, a quorum is not present, it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the Company.

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the members present shall choose some one of their number to be chairman.

(41.) The

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members, it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the Company in general meeting. In the case of an equality of votes at any general meeting, the chairman shall be entitled to a second or casting vote.

Votes of Members.

(44.) Every member shall have one vote for every share up to ten. He shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares.

(45.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator; and if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first in the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer, at any meeting held after the expiration of three months from the registration of the Company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy.

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or, if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses. No person shall be appointed a proxy who is not a member of the Company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the Company not less than seventy-two hours

hours before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, , of , being a member of the Company, Limited, and entitled to vote or votes, hereby appoint , of , as my proxy, to vote for me and on my behalf at the (ordinary *or* extraordinary, *as the case may be*) general meeting of the Company to be held on the day of , and at any adjournment thereof (*or* at any meeting of the Company that may be held in the year).

As witness my hand, this day of

Signed by the said , in the presence of

Directors.

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the Company in general meeting.

Powers of Directors.

(55.) The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not by the foregoing Act, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act and to such regulations, being not inconsistent with the aforesaid regulations, or provisions, as may be prescribed by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of Directors.

(57.) The office of director shall be vacated—

if he, or any partner of his, or the firm of which he is a member,

member, holds any other office or place of profit under the Company;

if he becomes bankrupt or insolvent;

if he is punished under any of the penal provisions of the foregoing Act;

if he is concerned in or participates in the profits of any contract with the Company.

But the above rules shall be subject to the following exceptions:—that no director shall vacate his office by reason of his being a member of any Company which has entered into contracts with or done any work for the Company of which he is director; nevertheless, he shall not vote in respect of such contract or work, and, if he does so vote, his vote shall not be counted.

Rotation of Directors.

(58.) At the first ordinary meeting after the registration of the Company, the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year, one-third of the directors for the time being, or, if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the Company shall, unless the directors agree among themselves, be determined by ballot. In every subsequent year, the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The Company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If, at any meeting at which an election of directors ought to take place, the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The Company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(64.) Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain

retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The Company in general meeting may, by a special resolution, remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead. The person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed.

Proceedings of Directors.

(66.) The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote. A director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman of their meetings, and determine the period for which he is to hold office; but, if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit. Any Committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on it by the directors.

(69.) A committee may elect a chairman of its meetings. If no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the members present; and, in case of an equality of votes, the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors, or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends.

(72.) The directors may, with the sanction of the Company in

in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the Company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the Company such sum as they think proper as a reserved fund to meet contingencies, or for equalizing dividends, or for repairing or maintaining the works connected with the business of the Company or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the Company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned; and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the Company.

(77.) No dividend shall bear interest as against the Company.

Accounts.

(78.) The directors shall cause true accounts to be kept—

of the stock in trade of the Company;

of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place; and

of the credits and liabilities of the Company.

The books of account shall be kept at the registered office of the Company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Company in general meeting, shall be open to the inspection of the members during the hours of business.

(79.) Once at the least in every year the directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expenses of the establishment, salaries and other like matters. Every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and, in cases where any item of expenditure

expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year and laid before the Company in general meeting, and such balance-sheet shall contain a summary of the property and liabilities of the Company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served.

Audit.

(83.) Once at the least in every year the accounts of the Company shall be examined, and the correctness of the balance-sheet ascertained by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors; subsequent auditors shall be appointed by the Company in general meeting.

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the Company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the Company; and no director or other officer of the Company is eligible during his continuance in office.

(87.) The election of auditors shall be made by the Company at their ordinary meeting in each year.

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the Company in general meeting.

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the Company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same.

(91.) If no election of auditors is made in manner aforesaid, the Local Government may, on the application of not less than five members of the Company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the Company for his services.

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

(93.) Every

(93.) Every auditor shall have a list delivered to him of all books kept by the Company, and shall at all reasonable times have access to the books and accounts of the Company. He may, at the expense of the Company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any other officer of the Company.

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations and properly drawn up so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory. Such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(95.) A notice may be served by the Company upon any member either personally or by sending it through the post in a letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Balance-sheet.

DR. *Balance-sheet (a) of the* *Company made up to* *18* CR.

		Capital and Liabilities.	Rs.	As.			Property and Assets.	Rs.	As.
I. Capital.		Showing—			III. Property held by the Company.		Showing—		
	1	The number of shares				7	Immoveable property—distinguishing—		
	2	The amount paid per share					(a) Freehold land		
	3	If any arrears of calls, the nature of the arrear and the names of the defaulters					(b) " buildings		
	4	The particulars of any forfeited shares ...					(c) Leasehold		
II. Debts and Liabilities of the Company.		Showing				8	Moveable property—distinguishing—		
	5	The amount of loans on mortgages or debenture-bonds					(d) Stock in trade		
	6	The amount of debts owing by the Company—distinguishing—					(e) Plant...		
		(a) Debts for which acceptances have been given					The cost to be stated with deductions for deterioration in value as charged to the reserve fund or profit and loss		
		(b) Debts to tradesmen for supplies of stock in trade or other articles			IV. Debts owing to the Company.		Showing—		
		(c) Debts for law-expenses				9	Debts considered good for which the Company hold bills or other securities		
		(d) Debts for interest on debentures or other loans				10	Debts considered good for which the Company hold no security		
		(e) Unclaimed dividends				11	Debts considered doubtful and bad		
		(f) Debts not enumerated above					Any debt due from a director or other officer of the Company to be separately stated ...		
VI. Reserve Fund.		Showing—			V. Cash and Investments.		Showing—		
		The amount set aside from profits to meet contingencies				12	The nature of investment and rate of interest ...		
VII. Profit and Loss.		Showing—				13	The amount of cash, where lodged, and if bearing interest		
		The disposable balance for payment of dividends, &c.							
Contingent Liabilities.		Claims against the Company not acknowledged as debts							
		Monies for which the Company is contingently liable							

(a) See clauses 81 and 82 of the foregoing Table A.

TABLE B.

TABLE B.

TABLE OF FEES to be paid to the Registrar of joint stock Companies by a Company having a capital divided into shares.

	Rs.	A.	P.
For registration of a Company whose nominal capital does not exceed Rs. 20,000, a fee of	40	0	0
For registration of a Company whose nominal capital exceeds Rs. 20,000, the above fee of forty rupees, with the following additional fees regulated according to the amount of nominal capital; (that is to say)—			
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 20,000 rupees up to 50,000 rupees	20	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 50,000 rupees up to 10,00,000 rupees	5	0	0
For every 10,000 rupees of nominal capital, or part of 10,000 rupees, after the first 10,00,000 rupees	1	0	0
For registration of any increase of capital made after the first registration of the Company, the same fees per 10,000 rupees, or part of 10,000 rupees, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no Company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 1,000 rupees, taking into account, in the case of fees payable on an increase of capital after registration, the fees paid on registration.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association ...	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ...	5	0	0

TABLE C.

TABLE C.

TABLE OF FEES to be paid to the Registrar of joint stock Companies by a Company not having a capital divided into shares :—

	Rs.	A.	P.
For registration of a Company whose number of members, as stated in the articles of association, does not exceed 20 ...	40	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	100	0	0
For registration of a Company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of Rs. 100 with an additional Rs. 5 for every 50 members, or less number than 50 members, after the first 100.			
For registration of a Company in which the number of members is stated in the articles of association to be unlimited, a fee of	400	0	0
For registration of any increase on the number of members made after the registration of the Company, in respect of every 50 members, or less than 50 members, of such increase	5	0	0
Provided that no one Company shall be liable to pay on the whole a greater fee than Rs. 400 in respect of its number of members, taking into account the fee paid on the first registration of the Company.			
For registration of any existing Company, except such Companies as are by this Act exempted from payment of fees in respect of registration under this Act, the same fee as is charged for registering a new Company.			
For registering any document hereby required or authorized to be registered, other than the memorandum of association ...	5	0	0
For making a record of any fact hereby authorized or required to be recorded by the Registrar of Companies, a fee of ...	5	0	0

FORM D.

FORM D.

FORM OF STATEMENT REFERRED TO IN PART III OF THE ACT.

* The Capital of the Company is Rs. divided into shares of each.

The number of shares issued is . Calls to the amount of Rs. per share have been made, under which the sum of Rs. has been received.

The liabilities of the Company on the first day of January (*or* July) were :—

Debts owing to sundry persons by the Company :

Under decree, Rs.
On mortgages or bonds, Rs.
On notes, bills or hundís, Rs.
On other contracts, Rs.
On estimated liabilities, Rs.

The assets of the Company on that day were :—

Government securities [*stating them*], Rs.
Bills of exchange, hundís and promissory notes, Rs.
Cash at the bankers, Rs.
Other securities, Rs.

SECOND SCHEDULE.

(SEE SECTION 95.)

FORM A.

Memorandum of association of a Company limited by shares.

1st.—The name of the Company is "The Company, Limited."

2nd.—The registered office of the Company will be situate in .

3rd.—The objects for which the Company is established are " and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—The liability of the members is limited.

5th.—The capital of the Company is Rs. divided into shares of Rs. each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association, and we respectively agree

* If the Company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

agree to take the number of shares in the capital of the Company set opposite our respective names :—

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A.* B. of	
2. *C.* *D.* „	
3. *E.* *F.* „	
4. *G.* *H.* „	
5. *I.* *J.* „	
6. *K.* *L.* „	
7. *M.* *N.* „	
Total shares taken ...	

Dated the *day of*

Witness to the above signatures.

O. P. of

FORM B.

Memorandum and articles of association of a Company limited by guarantee, and not having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Mutual Calcutta Marine Association, Limited."

2nd.—The registered office of the Company will be situate in Calcutta.

3rd.—The objects for which the Company is established are "the mutual insurance of ships belonging to members of the Company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such

such amount as may be required not exceeding Rs. 100.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* „
3. *E. F.* „
4. *G. H.* „
5. *I. J.* „
6. *K. L.* „
7. *M. N.* „

Dated the *day of*

Witness to the above signatures.

O. P. of

Articles of Association to accompany preceding Memorandum of Association.

(1.) The Company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of Members.

(3.) Every person shall be deemed to have agreed to become a member of the Company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General Meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the Company, and at such place, as the directors may determine.

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the Company in general meeting; and, if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting.

(8.) Any

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the Company.

(9.) Upon the receipt of such requisition, the directors shall forthwith proceed to convene a general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists or any other five members may themselves convene a meeting.

Proceedings at General Meetings.

(10.) Seven days' notice at the least, specifying the place, the day and the hour of meeting, and, in case of special business, the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the Company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend unless a quorum of members is present at the commencement of such business. Such quorum shall be ascertained as follows, that is to say:—if the members of the Company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty; with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting, a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved. In any other case, it shall stand adjourned to the same day in the following week, at the same time and place; and, if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the Company.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other

other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs; and the result of such poll shall be deemed to be the resolution of the Company in general meeting.

Votes of Members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot, he may vote by his committee or other legal curator: if any member is a minor, he may vote by his guardian or any one of his guardians if more than one.

(21.) No member shall be entitled to vote at any meeting unless all monies due from him to the Company have been paid.

(22.) Votes may be given either personally or by proxies. A proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member, and the instrument appointing him shall be deposited at the registered office of the Company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

Company, Limited.

I, , of , being a member of the Company, Limited, hereby appoint , of , as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the Company to be held on the day of , and at any adjournment thereof [*or* at any meeting of the Company that may be held in the year].

As witness my hand, this day of .
Signed by the said in the presence of .

Directors.

(25.) The number of the directors and the names of the first directors shall be determined by the subscribers of the memorandum of association.

(26.) Until

(26.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors.

Powers of Directors.

(27.) The business of the Company shall be managed by the directors, who may exercise all such powers of the Company as are not hereby required to be exercised by the Company in general meeting; but no regulation made by the Company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of Directors.

(28.) The directors shall be elected annually by the Company in general meeting.

Business of Company.

(Here insert rules as to mode in which business of insurance is to be conducted.)

Accounts.

(29.) The accounts of the Company shall be audited by a committee of five members, to be called the audit-committee.

(30.) The first audit-committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit-committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit-committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit-committee shall have a list delivered to them of all books kept by the Company, and they shall at all reasonable times have access to the books and accounts of the Company.

They may, at the expense of the Company, employ accountants or other persons to assist them in investigating such accounts, and they may, in relation to such accounts, examine the directors or any other officer of the Company.

(34.) The audit-committee shall make a report to the members upon the balance-sheet and accounts, and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet containing the particulars required by these regulations and properly drawn up, so as to exhibit a true and correct view of the state of the Company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have or has been given by the directors, and whether they or it have or has been satisfactory; and such report shall be read together with the report of the directors at the ordinary meeting.

Notices.

Notices.

(35.) A notice may be served by the Company upon any member, either personally, or by sending it through the post in a letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and, in proving such service, it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

Winding-up.

(37.) The Company shall be wound up voluntarily whenever an extraordinary resolution, as defined by The Indian Companies Act, 1882, is passed, requiring the Company to be wound up voluntarily.

Names, Addresses and Descriptions of Subscribers.

1.	*A. B.* of	...	...	Merchant.
2.	*C. D.* of	...	...	"
3.	*E. F.* of	...	...	"
4.	*G. H.* of	...	...	"
5.	*I. J.* of	...	...	"
6.	*K. L.* of	...	...	"
7.	*M. N.* of	...	...	"

Dated the day of 18 .

Witness to the above signatures.

O. P. of

FORM C.

Memorandum and articles of association of a Company limited by guarantee, and having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Hotel Company, Limited."

2nd.—The registered office of the Company will be situate in

3rd.—The objects for which the Company is established are "the facilitating travelling in by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th.—Every member of the Company undertakes to contribute to the assets of the Company, in the event of the same being

being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the Company contracted before the time at which he ceases to be a member, and the costs, charges and expenses of winding-up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding Rs. 200.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 18 .

Witness to the above signatures.

O. P. of

Articles of Association to accompany preceding Memorandum of Association.

1. The capital of the Company shall consist of five lákhs of rupees divided into five thousand shares of one hundred rupees each.

2. The directors may, with the sanction of the Company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the Company in general meeting, cancel any shares belonging to the Company.

4. All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names, addresses and descriptions of subscribers.	Number of shares taken by each subscriber.
1. *A. B.* of	
2. *C. D.* of	
3. *E. F.* of	
4. *G. H.* of	
5. *I. J.* of	
6. *K. L.* of	
7. *M. N.* of	

Total shares taken

Dated the day of 18 .

Witness to the above signatures.

O. P. of

Memorandum and articles of association of an unlimited Company having a capital divided into shares.

Memorandum of Association.

1st.—The name of the Company is "The Patent Company."

2nd.—The registered office of the Company will be situate in .

3rd.—The objects for which the Company is established are "the working of a patent method of , of which method *O. P.* of is the sole patentee."

We, the several persons whose names are subscribed, are desirous of being formed into a Company in pursuance of this memorandum of association.

Names, Addresses and Descriptions of Subscribers.

1. *A. B.* of
2. *C. D.* of
3. *E. F.* of
4. *G. H.* of
5. *I. J.* of
6. *K. L.* of
7. *M. N.* of

Dated the day of 18 .

Witness to the above signatures.
Q. R. of

Articles of Association to accompany the preceding Memorandum of Association.

Capital of the Company.

The capital of the Company is twenty thousand rupees divided into twenty shares of one thousand rupees each.

Application of Table A.

All the articles of Table A shall be deemed to be incorporated with these articles, and to apply to the Company.

We, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the Company set opposite our respective names.

Names

Names, addresses and descriptions of subscribers.	Number of shares taken by subscribers.
1. *A. B.* of 2. *C. D.* of 3. *E. F.* of 4. *G. H.* of 5. *I. J.* of 6. *K. L.* of 7. *M. N.* of	

Total shares taken

Dated the *day of* 18 .

Witness to the above signatures.

Q. R. of

FORM E.

As required by the second part of the foregoing Act.

Summary of capital and shares of the Company made up to the day of .

Nominal capital Rs. , divided into shares of Rs. each.

Number of shares taken up to the day of .

There has been called up on each share Rs. .

Total amount of calls received Rs. .

Total amount of calls unpaid Rs. .

List of persons holding shares in the Company on the day of and of persons who have held shares therein at any time during the year immediately preceding the said day of showing their names and addresses and an account of the shares so held.

Folio

Folio in register ledger containing particulars.	Names, Addresses and Occupations.				Account of Shares.					Remarks.
	Surname.	Christian name.	Address.	Occupation.	Shares held by existing members on the day of .	Additional shares held by existing members during preceding year.		Shares held by persons no longer members.		
						Number.	Date of transfer.	Number.	Date of transfer.	

Government of India Central Printing Office.—No. 727 L. D.—26-4-82—3,500.

ACT No. VII of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 24th February, 1882.)

An Act to amend the law relating to Powers-of-Attorney.

FOR the purpose of amending the law relating to Powers-of-Attorney; it is hereby enacted as follows:—

1. This Act may be called "The Powers-of-Attorney Act, 1882": **Short title.**

It applies to the whole of British India; **Local extent.**

and it shall come into force on the first day of May, 1882. **Commencement.**

2. The donee of a power-of-attorney may, if he thinks fit, execute or do any assurance, instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. **Execution under power-of-attorney.**

This section applies to powers-of-attorney created by instruments executed either before or after this Act comes into force.

3. Any person making or doing any payment or act in good faith, in pursuance of a power-of-attorney, shall not be liable in respect of the payment or act by reason that, before the payment or act, the donor of the power had died or become lunatic, of unsound mind, or bankrupt or insolvent, or had revoked the power, **Payment by attorney under power, without notice of death, &c., good.**

[*Price one anna and six pies.*]

power, if the fact of death, lunacy, unsoundness of mind, bankruptcy, insolvency or revocation was not, at the time of the payment or act, known to the person making or doing the same.

But this section shall not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer, if the payment had not been made by him.

This section applies only to payments and acts made or done after this Act comes into force.

Deposit of original instruments creating powers-of-attorney.

4. (*a*) An instrument creating a power-of-attorney, its execution being verified by affidavit, statutory declaration or other sufficient evidence, may, with the affidavit or declaration, if any, be deposited in the High Court within the local limits of whose jurisdiction the instrument may be.

(*b*) A separate file of instruments so deposited shall be kept; and any person may search that file, and inspect every instrument so deposited; and a certified copy thereof shall be delivered out to him on request.

(*c*) A copy of an instrument so deposited may be presented at the office and may be stamped or marked as a certified copy, and, when so stamped or marked, shall become and be a certified copy.

(*d*) A certified copy of an instrument so deposited shall, without further proof, be sufficient evidence of the contents of the instrument and of the deposit thereof in the High Court.

(*e*) The High Court may, from time to time, make rules for the purposes of this section, and prescribing, with the concurrence of the Local Government, the fees to be taken under clauses (*a*), (*b*) and (*c*).

(*f*) Throughout British Burma, the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the High Court.

(*g*) This section applies to instruments creating powers-of-attorney executed either before or after this Act comes into force.

5. A married

5. A married woman, whether a minor or not, shall, by virtue of this Act, have power, as if she were unmarried and of full age, by a non-testamentary instrument, to appoint an attorney on her behalf, for the purpose of executing any non-testamentary instrument or doing any other act which she might herself execute or do; and the provisions of this Act, relating to instruments creating powers-of-attorney, shall apply thereto.

Power-of-attorney of married women.

This section applies only to instruments executed after this Act comes into force.

6. The Trustees and Mortgagees Powers Act, 1866, section 39, is hereby repealed.

Act XXVIII of 1866, s. 39, repealed.

Government Central Press.—No. 723 L. D.—25-3-82.—3,000.

BENGAL SECRETARIAT LIBRARY.

ACT No. VIII OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd March, 1882.)

An Act to amend the Indian Penal Code.

FOR the purpose of amending the Indian Penal Code; It is hereby enacted as follows:— Preamble.

1. In the second clause of section 40 of the said Code, before the figure "109," the figures "64, 65, 66, 71" shall be inserted. Amendment of section 40, clause 2, of Indian Penal Code.

2. In section 64 of the said Code, for the first twelve words, the following shall be substituted, namely:— Amendment of section 64 of same Code.

"In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

"and in every case of an offence punishable with fine only, in which the offender is sentenced to a fine."

3. In section 67, after the words "fine only," the words "the imprisonment which the Court imposes in default of payment of the fine shall be simple, and" shall be inserted. Amendment of section 67 of same Code.

4. To section 71 of the said Code, the following clause shall be added:— Addition to section 71 of same Code

"Where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

"where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

"the

[*Price one anna and three pies.*]

"the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences."

Amendment of section 73 of same Code.

5. In section 73 of the said Code, for the words "be less than a" the words "shall not exceed one" shall be substituted.

New Exception to section 214 of same Code.

6. In section 214 of the said Code, for the Exception, the following shall be substituted, namely:—

"*Exception.*—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded."

Amendment of section 309 of same Code.

7. In section 309 of the said Code, for the last seven words the words "or with fine or with both" shall be substituted.

Amendment of section 335 of same Code.

8. In section 335 of the said Code, before the word "causes" the word "voluntarily" shall be inserted.

Amendment of section 410 of same Code.

9. In section 410 of the said Code, after the words "designated as 'stolen property'" the following words shall be inserted, namely:—"whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India"; and the words "offence of" shall be omitted.

Addition to section 435 of same Code.

10. In section 435 of the said Code, after the words "or upwards" the following words shall be inserted, namely:—

"or (where the property is agricultural produce) ten rupees or upwards."

Local extent. Commencement.

11. This Act extends to the whole of British India; and shall come into force on the first day of January, 1883.

Government Central Press.—No. 769 L. D.—25-8-82.—3,600.

ACT No. IX of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 2nd March, 1882.)

An Act to amend the Prisoners' Act, 1871.

WHEREAS it is expedient to amend Act No. V of 1871 *(to consolidate the laws relating to Prisoners confined by order of a Court)*; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Prisoners' Act Amendment Act, 1882": Short title

it extends to the whole of British India; Local extent.

and it shall come into force on the first day of January, 1883. Commencement.

2. For section thirty-three of the said Act the following shall be substituted (namely):— Section substituted for section 33, Act V of 1871

"33. The Governor General in Council may, from time to time, appoint places within British India to which persons sentenced to transportation shall be sent: and the Local Government, or some officer duly authorized in this behalf by the Local Government, shall give orders for the removal of such persons to the places so appointed, except when sentence of transportation is passed on a person already undergoing transportation under a sentence previously passed for another offence." Governor General in Council to appoint places to which persons sentenced to transportation shall be sent Local Government to direct removal of such persons to places appointed

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Government Central Press —No 769 L D - 25 3 82 2,600

THE CODE OF CRIMINAL PROCEDURE, 1882.

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[*Price three rupees.*]

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ACT No. X OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 6th March, 1882.*)

An Act to consolidate and amend the law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. This Act may be called "The Code of Criminal Procedure, 1882": and shall come into force on the first day of January, 1883;

Local extent.

It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law now in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) any officer duly authorized to try petty offences in military bázárs at cantonments and stations occupied by the troops of the Presidencies of Fort St. George and Bombay respectively;

(*c*) heads

(*c*) heads of villages in the Presidency of Fort St. George; or

(*d*) village Police-officers in the Presidency of Bombay:

(*e*) and nothing in sections 174, 175 and 176 shall apply to the police in the town of Madras.

Repeal of enactments.

2. On and from the first day of January, 1883, the enactments mentioned in the first schedule shall be repealed to the extent specified in the third column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, &c., under repealed Acts.

All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the first day of January, 1883, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

References to Code of Criminal Procedure and other repealed enactments.

3. In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure, Act No. XXV of 1861, or Act No. X of 1872, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts.

In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate", "Subordinate Magistrate, first class", and "Subordinate Magistrate, second class", shall respectively be deemed to mean "Magistrate of the first class", "Magistrate of the second class", and "Magistrate of the third class"; the expression "Magistrate of a division of a district" shall be deemed to mean

mean "Sub-divisional Magistrate"; the expression "Magistrate of the district" shall be deemed to mean "District Magistrate", and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate."

Interpretation-clause.

4. In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

"Complaint":

(*a*) "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence; but does not include the report of a Police-officer:

"Investigation":

(*b*) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or Police-officer) who is authorized by a Magistrate in this behalf:

"Inquiry":

(*c*) "Inquiry" includes every inquiry conducted under this Code by a Magistrate or Court:

"Judicial proceeding":

(*d*) "Judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken:

"Writing" and "written":

(*e*) "Writing" and "written" include "printing", "lithography", "photography", "engraving", and every other mode in which words or figures can be expressed on paper or on any substance:

"Sub-division":

(*f*) "Sub-division" means a sub-division made under this Code of a District:

"Province":

(*g*) "Province" means the territories for the time being under the administration of any Local Government:

"Presidency-town":

(*h*) "Presidency-town" means the local limits for the time being of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William, Madras or Bombay:

"High Court":

(*i*) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the

High

High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Panjáb and the Recorder of Rangoon:

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area;

or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

"Chief Justice": (*j*) "Chief Justice" includes also ~~the senior Judge of the Chief Court~~;

"Advocate General": (*k*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf:

"Clerk of the Crown": (*l*) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

"Public Prosecutor": (*m*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor; and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction:

"Pleader": (*n*) "Pleader" used with reference to any proceeding in any Court, means a pleader authorized under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakíl and an attorney of a High Court so authorized, and (2) any mukhtár or other person appointed with the permission of the Court to act in such proceeding:

"Police-station": (*o*) "Police-station" means any post declared, generally or specially, by the Local Government to be a Police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf; and "Officer in charge of a Police-station"

Police-station" includes, when the officer in charge of the Police-station is absent therefrom or unable from illness to perform his duties, the Police-officer present at the Police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other Police-officer so present: "Officer in charge of a Police-station":

(*p*) "Offence" means any act or omission made punishable by any law for the time being in force: "Offence":

(*q*) "Cognizable offence" means an offence for, and "cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant: "Cognizable offence": "Cognizable case":

"Non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a Police-officer, within or without the Presidency-towns, may not arrest without warrant: "Non-cognizable offence": "Non-cognizable case":

(*r*) "Bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force; and "non-bailable offence" means any other offence: "Bailable offence": "Non-bailable offence":

(*s*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months: "Warrant-case":

(*t*) "Summons-case" means a case relating to an offence not so punishable: "Summons-case":

(*u*) "European British subject" means— "European British subject":

(1) any subject of Her Majesty born, naturalized or domiciled in the United Kingdom of Great Britain and Ireland, or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of the Cape of Good Hope or Natal;

(2) any child or grand-child of any such person by legitimate descent:

(*v*) "Chapter" means a chapter of this Code; and "Schedule" means a schedule hereto annexed: "Chapter": "Schedule":

(*w*) "Place"

"Place."

(*w*) "Place" includes also a house, building, tent and vessel.

Words referring to acts.

Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code.

all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code.

Trial of offences under Penal Code.

Trial of offences against other laws.

5. All offences under the Indian Penal Code shall be inquired into and tried according to the provisions hereinafter contained; and all offences under any other law shall be inquired into and tried according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Classes of Criminal Courts.

6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session:

II.—Courts of Presidency Magistrates:

III.—Courts of Magistrates of the first class:

IV.—Courts of Magistrates of the second class:

V.—Courts of Magistrates of the third class.

B.—Territorial Divisions.

Sessions Divisions:

7. Every Province (excluding the Presidency-towns)

towns) shall be a Sessions Division, or shall consist of Sessions Divisions :

and every Sessions Division shall, for the purposes of this Code, be a District or consist of Districts. Districts.

The Local Government may alter the limits, or, with the previous sanction of the Governor General in Council, the number, of such Divisions and Districts. Power to alter Divisions and Districts.

The Sessions Divisions and Districts existing when this Code comes into force shall be Sessions Divisions and Districts respectively, unless and until they are so altered. Existing Divisions and Districts maintained till altered.

Every Presidency-town shall, for the purposes of this Code, be deemed to be a District. Presidency-towns to be deemed Districts.

8. The Local Government may divide any District outside the Presidency-towns into Sub-divisions, or make any portion of any such District a Sub-division, and may alter the limits of any Sub-division. Power to divide Districts into Sub-divisions.

All existing Sub-divisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code. Existing Sub-divisions maintained.

C.—Courts and Offices outside the Presidency-towns.

9. The Local Government shall establish a Court of Session for every Sessions Division, and appoint a Judge of such Court. Court of Session.

It may also appoint Additional Sessions Judges, Joint Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. In every District outside the Presidency-towns, the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate. District Magistrate.

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive adminstration Officers temporarily succeeding to vacancies in

office of District Magistrate.

tion of the District, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Subordinate Magistrates.

12. The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any District outside the Presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Local limits of their jurisdiction.

Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such District.

Power to put Magistrate in charge of Sub-division.

13. The Local Government may place any Magistrate of the first or second class in charge of a Sub-division, and relieve him of the charge as occasion requires.

Such Magistrates shall be called Sub-divisional Magistrates.

Delegation of powers to District Magistrate.

The Local Government may delegate its powers under this section to the District Magistrate.

Special Magistrates.

14. The Local Government may confer upon any person all or any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the Presidency-towns.

Such Magistrates shall be called Special Magistrates.

With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by the first paragraph of this section.

No

No powers shall be conferred under this section on any Police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

Benches of Magistrates.

15. The Local Government may direct any two or more Magistrates in any place outside the Presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the powers conferred or conferrible by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exercisable by Bench in absence of special direction.

Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any District respecting the following subjects:—

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Magistrates and

17. All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section

Benches to District Magistrate;

tion 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Sub-divisional Magistrate.

every Magistrate (other than a Sub-divisional Magistrate) and every Bench exercising powers in a Sub-division shall be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the Presidency-towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the Presidency-town for which he is appointed and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April,

April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session.

E.—Justices of the Peace.

Justices of the Peace for the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the Presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the Presidency-towns.

23. The Governor General in Council or the Local Government, so far as regards the town of Calcutta,

and the Local Government, so far as regards the towns of Madras and Bombay,

may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the

the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom such Governor General in Council or Local Government (as the case may be) thinks fit.

Present Justices of the Peace.

24. Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried by the High Court or Court of Session or by any other Court by which such offence is shown in the eighth column of the second schedule to be triable. Offences under Penal Code.

29. Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. Offences under other laws.

When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code: provided that—

(*a*) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(*b*) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may extend to three years; and

(*c*) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may extend to one year.

30. In the territories respectively administered by the Lieutenant-Governor of the Panjáb and the Chief Commissioners of Oudh, the Central Provinces, British Burma, Coorg and Assam, and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death. Offences not punishable with death.

B.—Sentences which may be passed by Courts of various Classes.

31. A High Court may pass any sentence authorized by law. Sentences which High Courts and Sessions Judges may pass.

A Sessions

A Sessions Judge, Additional Sessions Judge or Joint Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of transportation for a term exceeding seven years or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding three years passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge.

Sentences which Magistrates may pass.

32. The Courts of Magistrates may pass the following sentences, namely:

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:	Imprisonment for a term not exceeding two years, including such solitary confinement as is authorized by law; Fine not exceeding one thousand rupees; Whipping.
(*b*) Courts of Magistrates of the second class:	Imprisonment for a term not exceeding six months, including such solitary confinement as is authorized by law; Fine not exceeding two hundred rupees; Whipping.
(*c*) Courts of Magistrates of the third class.	Imprisonment for a term not exceeding one month; Fine not exceeding fifty rupees.

The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorized by law to pass.

No

No Court of any Magistrate of the second class shall pass a sentence of whipping unless he is specially empowered in this behalf by the Local Government.

Power of Magistrates to sentence to imprisonment in default of fine.

33. The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorized by law in case of such default: provided that the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

Provided also that in no case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate specially empowered under section 30 may pass any sentence of imprisonment for a term not exceeding seven years, including such solitary confinement as is authorized by law, or of fine, or of whipping, or of any combination of these punishments authorized by law.

But any sentence of imprisonment for a term exceeding three years passed by any such Court shall be subject to the confirmation of the Sessions Judge.

Sentence in cases of conviction of several offences at one trial.

35. When a person is convicted, at one trial, of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict: such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences

offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Maximum term of punishment.

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

For the purpose of confirmation or appeal, aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

C.—Ordinary and Additional Powers.

Ordinary powers of Magistrates.

36. All District Magistrates, Sub-divisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Additional powers conferrible on Magistrates.

37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Control of District Magistrates' investing power.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

D.—Conferment, Continuance and Cancellation of Powers.

Mode of conferring powers.

39. In conferring powers under this Code, the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Every

Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Continuance of powers of officers transferred.

41. The Local Government may withdraw any powers conferred under this Code on any person by it or by any officer subordinate to it.

Powers may be cancelled.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or Police-officer reasonably demanding his aid, whether within or without the Presidency-towns,

Public when to assist Magistrates and police.

(*a*) in the taking of any other person whom such Magistrate or Police-officer is authorized to arrest;

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray.

43. When a warrant is directed to a person other than a Police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Aid to person other than Police-officer, executing warrant.

44. Every

Public to give information of certain offences.

44. Every person, whether within or without the Presidency-towns, aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code (namely) 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or Police-officer of such commission or intention.

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Village-headman and other officers to report.

45. Every village-headman, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate, or to the officer in charge of the nearest Police-station, whichever is the nearer, any information which he may obtain respecting—

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(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, watchman or Police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

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(*b*) the resort to any place within, or the passage through, such village, of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, any non-bailable offence in or near such village;

(*d*) the occurrence therein of any sudden or unnatural death or of any death under suspicious circumstances.

EXPLANATION.—In this section "village" includes village-lands.

CHAPTER V.

CHAPTER V.

Of Arrest, Escape and Retaking.

A.—Arrest generally.

Arrest how made.

46. In making an arrest, the Police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Resisting endeavour to arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such Police-officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

Search of place entered by person sought to be arrested.

47. If any person acting under a warrant of arrest, or any Police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such Police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Procedure where ingress not obtainable.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant, and in any case in which a warrant may issue but cannot be obtained without affording the person to be arrested an opportunity of escape, for a Police-officer, to enter such place and search therein, and

in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance:

Provided

Breaking open zanána.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or Police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Power to break open doors and windows for purposes of liberation.

49. Any Police-officer or other person authorized to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

No unnecessary restraint.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

Search of arrested persons.

51. Whenever a person is arrested by a Police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail, but the person arrested cannot furnish bail, and

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the Police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing apparel, found upon him.

Mode of searching women.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Power to seize offensive weapons.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making

making the arrest is required by this Code to produce the person arrested.

B.—Arrest without Warrant.

54. Any Police-officer may, without an order from a Magistrate and without a warrant, arrest— When police may arrest without warrant.

first—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a Police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; ~~and~~

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy.

This section applies to the police in the towns of Calcutta and Bombay.

55. Any officer in charge of a Police-station may, in like manner, arrest or cause to be arrested— Arrest of vagabonds, habitual robbers, &c.

(*a*) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(*b*) any person within the limits of such station who

who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(*c*) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

Procedure when Police-officer deputes subordinate to arrest without warrant.

56. When any officer in charge of a Police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

Refusal to give name and residence.

57. When any person in the presence of a Police-officer commits or is accused of committing a non-cognizable offence, and refuses on demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless, before the expiration of that time, his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate if so required.

Pursuit of offenders into other jurisdictions.

58. A Police-officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest under this chapter, pursue such person into any place in British India.

Arrest by private persons.

59. Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a Police-officer; or, in the absence of a Police-officer, take such person to the nearest Police-station.

If

If there is reason to believe that such person comes under the provisions of section 54, a Police-officer shall re-arrest him.

If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a Police-officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no reason to believe that he has committed any offence, he shall be at once discharged.

Person arrested to be taken before Magistrate or officer in charge of Police-station.

60. A Police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a Police-station.

Person arrested not to be detained more than 24 hours.

61. No Police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Police to report apprehensions.

62. Officers in charge of Police-stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended.

63. No person who has been arrested by a Police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

65. Any

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a Police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. Every summons issued by a Court under this Code shall be in writing in duplicate signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Summons by whom served.

Such summons shall be served by a Police-officer; or, subject to such rules consistent with this Code as the Local Government may prescribe in this behalf, by an officer of the Court issuing it.

This section applies to the police in the towns of Calcutta and Bombay.

Summons how served.

69. The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with

with some adult male member of his family, or, in a Presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

Procedure when receipt cannot be obtained.

71. If the signature mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Company.

72. Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court with the endorsement required by that section.

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases, and when serving officer not present.

74. When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant

B.—Warrant of Arrest.

Form of warrant of arrest.

75. Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

76. Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

The endorsement shall state (*a*) the number of sureties, (*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound, and (*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. A warrant of arrest shall ordinarily be directed to one or more Police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no Police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, &c.

78. A District Magistrate or Sub-divisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or sub-division for

for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest Police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to Police-officer.

79. A warrant directed to any Police-officer may also be executed by any other Police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

Notification of substance of warrant.

80. The Police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

81. The Police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a Police-officer, forward the same by post or otherwise to any Magistrate or Commissioner of Police within the local limits of whose jurisdiction it is to be executed.

The Magistrate or Commissioner to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed within the local limits of his jurisdiction.

84. When

Warrant directed to Police-officer for execution outside jurisdiction.

84. When a warrant directed to a Police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a Police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

Such Magistrate or Police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the Police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the Police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

This section applies to the police in the towns of Calcutta and Bombay.

Procedure on arrest of person against whom warrant issued.

85. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner.

Procedure by Magistrate before whom person arrested is brought.

86. Such Magistrate or Commissioner shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court: provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate or Commissioner, or a direction has been endorsed under section 76 on the warrant and such person is ready and

and willing to give the security required by such direction, the Magistrate or Commissioner shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

Nothing in this section shall be deemed to prevent a Police-officer from taking security under section 76.

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides, or to some conspicuous place of such town or village; and

(*c*) a copy thereof shall be affixed to some conspicuous part of the Court-house.

A statement by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such person without such

such district, when endorsed by the District Magistrate within whose district such property is situate.

If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(*a*) by seizure; or

(*b*) by the appointment of a receiver; or

(*c*) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(*d*) by all or any two of such methods, as the Court thinks fit.

If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the District in which the land is situate, and in all other cases—

(*e*) by taking possession; or

(*f*) by the appointment of a receiver; or

(*g*) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(*h*) by all or any two of such methods, as the Court thinks fit.

The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure.

If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at

at the disposal of Government, under the last paragraph of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other rules regarding processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(*a*) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(*b*) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

93. The

Provisions in this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this chapter relating to a summons and warrant and their issue, service and execution shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a Police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document in the custody of the Postal or Telegraph authorities.

Procedure as to letters and telegrams.

95. If any document in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other

other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document to such person as such Magistrate or Court directs.

If any such document is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, paragraph one, has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

Nothing herein contained shall authorize any Magistrate, other than a District Magistrate or Chief Presidency Magistrate, to grant a warrant to search for a document in the custody of the Postal or Telegraph authorities.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

98. If

Search of house suspected to contain stolen property, forged documents, &c.

98. If a District Magistrate, Sub-divisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps or for forging, are kept or deposited in any place,

he may by his warrant authorize any Police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents, seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale, or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have

have been or to be intended to be used for counterfeiting coin or stamps or for forging.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Sub-divisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person if found shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.—General Provisions relating to searches.

Direction, &c., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

Persons in charge of closed place to allow search.

102. Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

If

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

Search to be made in presence of witnesses.

103. Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses, but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Power to impound document, &c., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for

106. Whenever any person accused of rioting, assault

assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation by threatening injury to person or property, is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

keeping the peace on conviction.

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

B.—Security for keeping the Peace in other Cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information that any person is likely to commit a breach of the peace, or to do any wrongful act that may probably occasion a breach of the peace, within the local limits of such Magistrate's jurisdiction, or that there is within such limits a person who is likely to commit a breach of the peace or do any wrongful act as aforesaid in any place beyond such limits, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Procedure of Magistrate, &c., not empowered to act under section 107.

108. When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful

wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions with a view to committing an offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding six months as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction is an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing the same to have been stolen, or that he habitually commits extortion, or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should

should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

Order to be made.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him, before the Court:

Provided that, whenever it appears to such Magistrate, upon the report of a Police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

116. The

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

117. When an order under section 112 has been read or explained under section 113, to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

Such inquiry shall be made, as nearly as may be practicable, where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials in summons-cases; and where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials in warrant-cases, except that no charge need be framed.

For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

Order to give security.

118. If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall make an order accordingly:

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than, that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly—that when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties.

119. If

119. If, on an inquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

Discharge of person informed against.

C.—Proceedings in all Cases subsequent to Order to furnish Security.

120. If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

Commencement of period for which security is required.

In other cases such period shall commence on the date of such order.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Contents of bond.

122. A Magistrate may refuse to accept any surety for good behaviour offered under this chapter, on the ground that, for reasons to be recorded by the Magistrate, such surety is an unfit person.

Power to reject sureties.

123. If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison, until such period expires or until within such period he gives the security to the Court or Magistrate which or who made the order requiring it, or to the

Imprisonment in default of security.

the officer in charge of the jail in which the person so ordered is detained.

Proceedings when to be laid before High Court or Court of Session.

When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall, if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit: provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

Imprisonment for failure to give security for keeping the peace shall be simple.

Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

124. Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged.

Whenever the District Magistrate or a Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Power of

125. The District Magistrate may at any time, for

for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace executed under this chapter by order of any Court in his District not superior to his Court.

District Magistrate to cancel any bond for keeping the peace.

126. Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

Discharge of sureties.

On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound to appear or to be brought before him.

When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124 be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

127. Any Magistrate or officer in charge of a Police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

Assembly to disperse on command of Magistrate or Police-officer.

This section applies to the police in the towns of Calcutta and Bombay.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a Police-station, whether within

Use of civil force to disperse.

or

or without the Presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. When a Magistrate determines to disperse any such assembly by military force, he may require any Commissioned or Non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869, to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law.

Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

Power of Commissioned Military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any Commissioned officer of Her Majesty's Army may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but, if while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thence-

forward

forward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, Military officer, Police-officer, soldier or volunteer for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and

(*a*) no Magistrate or Police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith in compliance with a requisition under section 128 or section 130, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which under military law he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. Whenever a District Magistrate, a Subdivisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration

flagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping grounds, and grounds left unoccupied for sanitary and recreative purposes.

134. The

134. The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

Service or notification of order.

If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

SECRETARIAT LIBRARY.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

Person to whom order is addressed to obey,

(*b*) appear in accordance with such order, and either show cause against the same, or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

or show cause or claim jury.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code; and the order shall be made absolute.

Consequence of his failing to do so.

137. If he appears and shows cause against the order, the Magistrate shall take evidence in the matter.

Procedure where he appears to show cause.

If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

If the Magistrate is not so satisfied, the order shall be made absolute.

138. On receiving an application under section 135 to appoint a jury, the Magistrate shall—

Procedure where he claims jury.

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

Procedure where jury finds Magistrate's order to be reasonable.

139. If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

In other cases, no further proceedings shall be taken.

Procedure on order being made absolute.

140. When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

Consequences of disobedience to order.

If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorize its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order

order shall be executed in the manner provided by section 140.

142. If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury.

Injunction pending inquiry.

In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

143. A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

Magistrate may prohibit repetition or continuance of public nuisances.

CHAPTER XI.

Temporary Orders in Urgent Cases of Nuisance.

144. In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or of any other Magistrate specially empowered by the Local Government or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

Power to issue order absolute at once in urgent cases of nuisance.

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession, or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction,

tion, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, or danger to human life, health or safety, or a riot or an affray.

An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

No order under this section shall remain in force for more than two months from the making thereof; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, &c., is likely to cause breach of peace.

145. Whenever a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any tangible immoveable property, or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court, in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

The

The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties is then in such possession of the said subject.

Inquiry as to possession.

If the Magistrate decides that one of the parties is then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

Party in possession to retain possession until legally evicted.

Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed.

146. If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession, of the subject of dispute, he may attach it until a competent Civil Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

Power to attach subject of dispute.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning the right to do or prevent the doing of anything in or upon any tangible immoveable property situate within the local limits of his jurisdiction, he may inquire into the matter; and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done or claiming that such thing may be done, obtains the decision of a competent Civil Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be.

Disputes concerning easements, &c.

Provided

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exercisable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exercisable only at particular seasons, unless the right has been exercised during the season next before such institution.

Local inquiry.

148. Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Sub-divisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions consistent with the law for the time being in force as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

The report of the person so deputed may be read as evidence in the case.

Order as to costs.

When any costs have been incurred by any party to a proceeding under this chapter for witnesses' or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every Police-officer may interpose for the purpose of preventing, and shall to the best of his ability prevent, the commission of any cognizable offence.

Information of design to commit such offences.

150. Every Police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the Police-officer to whom he is subordinate, and to any other officer whose

whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

151. A Police-officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152. A Police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public land-mark, or buoy or other mark used for navigation.

Inspection of weights and measures.

153. Any officer in charge of a Police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures, or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a Police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the

the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in non-cognizable cases.

155. When information is given to an officer in charge of a Police-station of the commission within the limits of such station of a non-cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

Investigation into non-cognizable cases.

No Police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Any Police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a Police-station may exercise in a cognizable case.

Investigation into cognizable cases.

156. Any officer in charge of a Police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

No proceeding of a Police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Procedure where cognizable offence suspected.

157. If, from information received or otherwise, an officer in charge of a Police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Provided

Provided as follows :—

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a Police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot:

Where local investigation dispensed with.

(*b*) if it appear to the officer in charge of a Police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Where Police-officer in charge sees no sufficient ground for investigation.

In each of the cases mentioned in clauses (*a*) and (*b*), the officer in charge of the Police-station shall state in his said report his reasons for not fully complying with the requirements of the first paragraph of this section.

158. Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

Such superior officer may give such instructions to the officer in charge of the Police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold an investigation or preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

160. Any Police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of wit-

161. Any Police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances

Examination of witnesses by police.

stances of the case, and may reduce into writing any statement made by the person so examined.

Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

Statements to police not to be signed or admitted in evidence.

162. No statement, other than a dying declaration, made by any person to a Police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or be used as evidence against the accused.

Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian Evidence Act, 1872.

No inducement to be offered.

163. No Police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian Evidence Act, 1872, section 24.

But no Police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

Power to record statements and confessions.

164. Any Magistrate not being a Police-officer may record any statement or confession made to him in the course of an investigation under this chapter, or at any time afterwards before the commencement of the inquiry or trial.

Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is in his opinion best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession he shall make a memorandum

a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

"(*Signed*) A. B.,
"*Magistrate.*"

Search by Police-officer.

165. Whenever an officer in charge of a Police-station, or a Police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorized to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing as directed in the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

Such officer shall, if practicable, conduct the search in person.

If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

When officer in charge of Police-station

166. An officer in charge of a Police-station may require an officer in charge of another Police-station, whether

may require another to issue search-warrant.

whether in the same or a different District, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

167. Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation is well-founded, the officer in charge of the Police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

If such order be given by a Magistrate other than the District Magistrate or Sub-divisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate Police-officer.

168. When any subordinate Police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the Police-station.

Release of accused when evidence deficient.

169. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that

that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

Case to be sent to Magistrate when evidence is sufficient.

170. If, upon an investigation under this chapter, it appears to the officer in charge of the Police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

When the officer in charge of a Police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant, if any, and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

If the Court of the District Magistrate or Subdivisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

The day fixed under this section shall be the day whereon

whereon the accused person is to appear, if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Complainants and witnesses not to be required to accompany Police-officer.

171. No complainant or witness on his way to Court of the Magistrate shall be required to accompany a Police-officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the Police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. Every Police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the Police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such Police-officer, the provisions

provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

Report of Police-officer.

173. Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the Police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties.

Where a superior officer of police has been appointed under section 158, the report shall be submitted through him, and he may, pending the orders of the Magistrate, direct the officer in charge of the Police-station to make further investigation.

Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, &c.

174. Every officer in charge of a Police-station, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall

shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

The report shall be signed by such Police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When there is any doubt regarding the cause of death, or when for any other reason the Police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other medical officer appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorized to hold inquests.

The following Magistrates are empowered to hold inquests; namely, any District Magistrate or Sub-divisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

Power to summon persons.

175. An officer in charge of a Police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

If

If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the Police-officer to attend a Magistrate's Court.

176. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*), any Magistrate so empowered may, hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the Police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case. Inquiry by Magistrate into cause of death.

Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined. Power to disinter corpse.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. Ordinary place of inquiry and trial.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any Sessions Division: Power to order cases to be tried in different Sessions Divisions.

Provided

Provided that such direction be not repugnant to any direction previously issued under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, or under this Code, section 526.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence, or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of

of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits, escape from custody, &c.

181. The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

Stealing.

The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Place of inquiry or trial where scene of offence is uncertain, or not in one district only;

182. When it is uncertain in which of several local areas an offence was committed, or

or where offence is continuing,

where an offence is committed partly in one local area and partly in another, or

or consists of several acts.

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

Offence committed on a journey.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or

into

into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offences against Railway, Telegraph, Post-office and Arms Acts.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a Presidency-town, whether the offence is stated to have been committed within such town or not: provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

185. Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court within the local limits of whose appellate criminal jurisdiction the offender actually is may decide by which Court the offence shall be inquired into or tried.

In British Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

186. When a Presidency Magistrate, a District Magistrate, a Sub-Divisional Magistrate or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence

Magistrate's procedure on arrest.

offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

Procedure where warrant issued by Subordinate Magistrate.

187. If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the Police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

Liability of British subjects for offences committed out of British India.

188. When an European British subject commits an offence in the dominions of a Prince or State in India in alliance with Her Majesty, or

when a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India:

Provided

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extradition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a commission for taking evidence as to the matters to which such depositions or exhibits relate.

"Political Agent" defined.

190. In sections 188 and 189 the expression "Political Agent" means and includes—

(*a*) the principal officer representing the British Indian Government in any territory beyond the limits of British India;

(*b*) any officer in British India appointed by the Governor General in Council, or the Governor in Council of the Presidency of Fort St. George or Bombay, to exercise all or any of the powers of a Political Agent, under the Foreign Jurisdiction and Extradition Act, 1879, for any territory not forming part of British India.

B.—Conditions requisite for Initiation of Proceedings.

Cognizance of offences by Magistrates.

191. Except as hereinafter provided, any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a Police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

The Local Government may empower any Magistrate of the first or second class to take cognizance under clause (*c*) of offences for which he may try or commit for trial.

Transfer of cases by Magistrates.

192. Any District Magistrate or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case, to transfer it for inquiry or trial to any other specified Magistrate in his District who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

193. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

Cases to be tried by Additional and Joint Sessions Judges;

Additional Sessions Judges and Joint Sessions Judges shall try such cases only as the Local Government by general or special order directs them to try, or as the Sessions Judge of the Division makes over to them for trial.

by Assistant Sessions Judges.

Assistant Sessions Judges shall try such cases only as the Sessions Judge of the Division by general or special order makes over to them for trial.

194. The

Cognizance of offences by High Court.

194. The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the twenty-fourth and twenty-fifth of Victoria, chapter 104.

195. No Court shall take cognizance—

Prosecution for contempts of lawful authority of public servants.

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned, or of some public servant to whom he is subordinate;

Prosecution for certain offences against public justice.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences relating to documents given in evidence.

(*c*) of any offence described in section 463, or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Nature of sanction necessary.

The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

Any sanction given or refused under this section may be revoked or granted by any authority to which the authority giving or refusing it is subordinate; and no

no such sanction shall remain in force for more than six months from the date on which it was given.

For the purposes of this section, every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the Sessions Division within which such Court is situate.

Prosecution for offences against the State.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294 A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

Prosecution of Judges and public servants.

197. When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Power of Government as to prosecution.

Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or public servant is to be conducted, and may specify the Court before which the trial is to be held.

Prosecution for breach of contract, defamation

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive)

and offences against marriage.

inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for adultery or enticing a married woman.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

Examination of complainant.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192:

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

Procedure by Magistrate not competent to take cognizance of the case.

201. If the complaint has been made in writing and the Magistrate is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper tribunal with an endorsement to that effect.

202. If

202. If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorise in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a Police-officer, or by such other person, not being a Magistrate or Police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint. Postponement of issue of process.

If such investigation is made by some person not being a Magistrate or a Police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a Police-station, except that he shall not have power to arrest without warrant.

This section applies to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding. Dismissal of complaint.

CHAPTER XVII.

Of the Commencement of Proceedings before Magistrates.

204. If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue Issue of process.

issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Nothing in this section shall be deemed to affect the provisions of section 90.

Magistrate may dispense with personal attendance of accused.

205. Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. Any Presidency Magistrate, District Magistrate, Sub-divisional Magistrate, Magistrate of the first class or any Magistrate empowered in this behalf by the Local Government may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

But save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided

provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

Process for production of further evidence.

If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

When accused person to be discharged.

209. When the evidence referred to in section 208, paragraphs 1 and 2, has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained, and copy furnished, to accused.

As soon as the charge has been framed, it shall be read and explained to the accused and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

211. The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

The

Further list.

The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

Order of commitment.

213. When the accused on being required to give in a list under section 211 has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Person charged outside Presidency-towns jointly with European British subject.

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Quashing commitments under section 213 or 214.

215. A commitment once made under section 213 or section 214 by a competent Magistrate can be quashed by the High Court only, and only on a point of law.

Summons to witnesses for defence when accused is committed.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself, to appear before the Court to which the accused has been committed:

Provided

Provided that where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Refusal to summon unnecessary witness unless deposit made.

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness.

Bond of complainants and witnesses.

217. Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary, and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

If any complainant or witness refuses to attend before the Court of Session or High Court, or to execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Commitment when to be notified.

218. When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Charge, &c., to be forwarded to High Court

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the

or Court of Session.

the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

English translation to be forwarded to High Court.

When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

Power to summon supplementary witnesses.

219. The Magistrate may summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail, commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

The

The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case. What implied in charge.

In the Presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court. Language of charge.

If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed. Previous conviction when to be set out.

Illustrations.

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception 1, one or other of the three provisos to that exception applied to it.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B, by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge.

(*d*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the Particulars as to time, place and person.

the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Effect of errors.

225. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was misled by such error or omission.

Illustrations.

Illustrations.

(*a*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in this case, a material error.

(*d*) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Buksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled, and that the error was material.

Procedure on commitment without charge or with imperfect charge.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Court may alter charge.

227. Any Court may alter any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before

before the verdict of the jury is returned or the opinions of the assessors are expressed.

Every such alteration shall be read and explained to the accused.

When trial may proceed immediately after alteration.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When new trial may be directed, or trial suspended.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Recall of witnesses when charge altered.

231. Whenever a charge is altered by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined.

Effect of material error.

232. If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against

against the accused in respect of the facts proved, it shall quash the conviction.

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence which he corruptly used or attempted to use as true or genuine was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and the causing grievous hurt.

Three offences of same kind within year may be charged together.

234. When a person is accused of more offences than one of the same kind, committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code, or of any special or local law.

I.—Trial for more than one offence.

235. I.—If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

II.—Offence falling within two definitions.

II.—If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be

be charged with and tried at one trial for each of such offences.

III.—Acts constituting one offence, but constituting when combined a different offence.

III.—If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with and tried at one trial for the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

Nothing contained in this section shall affect the Indian Penal Code, section 71.

Illustrations

to paragraph I—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and tried for, offences under sections 225 and 333 of the Indian Penal Code.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 491 of the Indian Penal Code.

(*d*) A has in his possession several seals knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted

convicted of, offences under sections 211 and 194 of the Indian Penal Code.

(*g*) A, with six others, commits the offences of rioting, grievous hurt, and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to paragraph II—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code.

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code. A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code.

to paragraph III—

(*m*) A commits robbery on B, and, in doing so, voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code.

Where it is doubtful what offence has been committed.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative

native with having committed some one of the said offences.

Illustration.

A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

When a person is charged with one offence, he can be convicted of another.

237. If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

When offence proved included in offence charged.

238. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence although he is not charged with it.

Nothing in this section shall be deemed to authorize a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property,

perty, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406.

(*b*) A is charged under section 325 of the Indian Penal Code with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

What persons may be charged jointly.

239. When more persons than one are accused of the same offence, or of different offences committed in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

Illustrations.

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

Withdrawal of remaining charges on conviction on one of several charges.

240. When more charges than one are made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

CHAPTER XX.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

Procedure in summons-cases.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Substance of accusation to be stated.

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Conviction on admission of truth of accusation.

243. If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate shall convict him accordingly.

Procedure when no such admission is made.

244. If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

Acquittal.

245. If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Sentence.

If he finds the accused guilty, he shall pass sentence upon him according to law.

246. A Magistrate

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused or any day subsequent thereto to which the hearing may be adjourned the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Power to stop proceedings when no complainant.

250. If in any case instituted upon complaint, a Magistrate acquits the accused under section 245 or section 247, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit.

Frivolous or vexatious complaints.

The sum so awarded shall be recoverable as if it were a fine: provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

Recovery of compensation.

At

At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

252. When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

253. If upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which if unrebutted would warrant his conviction, the Magistrate shall discharge him.

Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

255. The

255. The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make. Plea.

If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

256. If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts. Defence.

If the accused puts in any written statement, the Magistrate shall file it with the record.

257. If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing. Process for compelling production of evidence at instance of accused.

The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

258. If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal. Acquittal.

If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law. Conviction.

259. When the proceedings have been instituted upon complaint and upon any day fixed for the hearing of the case the complainant is absent and the Absence of complainant.

offence

offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. Notwithstanding anything contained in this Code,

(1) the District Magistrate,

(2) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(3) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government may try in a summary way all or any of the following offences :—

(*a*) Offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) Offences relating to weights and measures, under sections 264, 265 and 266 of the Indian Penal Code;

(*c*) Hurt, under section 323 of the same Code;

(*d*) Theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) Receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) Assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) Mischief, under section 427 of the same Code;

(*h*) House-trespass,

(*h*) House-trespass, under section 448 of the same Code;

(*i*) Insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(*j*) Abetment of any of the foregoing offences;

(*k*) An attempt to commit any of the foregoing offences, when such attempt is an offence:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

(*a*) Offences against the Indian Penal Code, sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336, 341, 352, 426 and 447;

(*b*) Offences against Municipal Acts, and the conservancy-clauses of Police Acts, punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) Abetment of any of the foregoing offences;

(*d*) An attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant-cases applicable.

262. In trials under this chapter, the procedure prescribed for summons-cases shall be followed in summons-cases, and the procedure prescribed for warrant cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but

but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Record in appealable cases.

264. In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorized to employ clerk.

The Local Government may authorize any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each

each member of such Bench present taking part in the proceedings.

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CHAPTER XXIII.

Of Trials before High Courts and Courts of Session.

A.—Preliminary.

"High Court" defined.

266. In this chapter, except in section 307, the expression "High Court" means a High Court of Judicature established or to be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, and includes ~~the Chief Court of the Panjáb~~, and such other Courts as the Governor General in Council may, by notification in the *Gazette of India*, declare to be High Courts for the purposes of this chapter.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, the trial may, if the High Court so directs, be by jury.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Local Government may order trials before Court of Session to be by jury.

269. The Local Government may, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any District, and may revoke or alter such order.

When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for all such offences.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement

B.—Commencement of Proceedings.

Commencement of trial.

271. When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Entry on unsustainable charge.

273. In trials before the High Court, when it appears to the High Court at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C—Choosing a Jury.

Number of jury.

274. In trials before the High Court the jury shall consist of nine persons.

In trials by jury before the Court of Session, the jury shall consist of such uneven number not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Jury for trial of persons not Europeans or Americans before Court of Session.

275. In a trial by jury, before the Court of Session, of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

276. The

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct: Jurors to be chosen by lot.

Provided that— Proviso.

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed; Existing practice maintained.

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present; ~~and~~ Persons not summoned when eligible.

thirdly, in the Presidency-towns— Trials before special jurors.

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed.

277. As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror. Names of jurors to be called.

Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated: Objection to jurors.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged. Objection without grounds stated.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed:— Grounds of objection.

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(*c*) his

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police-duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

(*g*) his inability to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276; or, if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury, provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

280. When the jurors have been chosen, they shall appoint one of their number to be foreman.

The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

Procedure when juror ceases to attend, &c.

282. If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any

any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Assessors how chosen.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Procedure when assessor is unable to attend.

285. If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Opening case for prosecution.

286. When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.

Examination of witnesses.

The prosecutor shall then examine his witnesses.

287. The

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Procedure after examination of witnesses for prosecution.

289. When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

If he says that he does not, the prosecutor may sum up his case; and if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused or any one of several accused says that he means to adduce evidence and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

If the accused, or any one of several accused says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

291. The

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Right of accused as to examination and summoning of witnesses.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply.

Prosecutor's right of reply.

293. Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occured, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

View by jury or assessors.

Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

When juror or assessor may be examined.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Jury or assessors to attend at adjourned sitting.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day, and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court,

Locking-up jury.

Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in Cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence, and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. In such cases, it is the duty of the Judge—

(*a*) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admisibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(*b*) to decide upon the meaning and construction of all documents given in evidence at the trial;

(*c*) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

299. It

299. It is the duty of the jury— Duty of jury.

(*a*) to decide which view of the facts is true, and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure, or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

(*a*) A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict. Retirement to consider.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

301. When the jury have considered their verdict, the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority. Delivery of verdict.

302. If

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict to be given on each charge.

Judge may question jury.

303. Unless otherwise ordered by the Court, the jury shall return a verdict on all the charges on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

Such questions and the answers to them shall be recorded.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

If the Judge disagrees with the majority, he shall at once discharge the jury.

If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge

307. If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority

a majority of the jurors, on all or any of the charges on which the accused has been tried, ~~so completely that he considers it~~ necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

disagrees with verdict.

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, but he may either remand the accused to custody or admit him to bail.

In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; ~~but it may~~ acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

308. Whenever the jury is discharged, the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

Re-trial of accused after discharge of jury.

H.—Conclusion of Trial in Cases tried with Assessors.

309. When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

Delivery of opinions of assessors.

The Judge shall then give judgment; but in doing so shall not be bound to conform to the opinions of the assessors.

Judgment.

If

If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) The part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge, unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence.

(*b*) If he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge.

(*c*) If he answers that he has been so previously convicted the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury or the Court and the assessors (as the case may be) shall then inquire concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Jurors' book.

311. In each Presidency-town, the jurors' book for the year current when this Code comes into force shall be taken as containing a correct list of ons liable to serve as jurors under this chapter.

Exemption of special jurors.

Those persons whose names are entered in the jurors' book as being liable to serve on special juries only shall be deemed to be persons privileged and liable to serve only as special jurors under this chapter during the year for which the said list has been prepared.

312. The

312. The names of not more than two hundred persons shall at any one time be entered in the special jurors' list. Number of special jurors.

313. The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare— Lists of common and special jurors.

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors' list for a previous year.

The Governor General in Council in the case of the High Court at Calcutta, and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision. Discretion of officer preparing lists.

314. Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation. Publication of lists, preliminary and revised.

Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

Copies of the said lists shall be affixed to some conspicuous part of the Court-house.

315. Out

Number of jurors to be summoned in Presidency-town.

315. Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each Presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

If, during the continuance of any sessions, it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the Presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the Presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the Commanding Officer, cause to be summoned such number of Commissioned and Non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting, as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his Commanding Officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who without lawful excuse fails

fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable by order of the Judge to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment in the civil jail until the fine is paid.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to serve as jurors or assessors at any trial held within the District in which they reside.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely:—

(*a*) officers in civil employ superior in rank to a District Magistrate;

(*b*) Judges;

(*c*) Commissioners and Collectors of Revenue or Customs;

(*d*) Persons engaged in the Preventive Service in the Customs Department;

(*e*) Persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty;

(*f*) Persons actually officiating as priests or ministers of their respective religions;

(*g*) Persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors;

(*h*) Surgeons and others who openly and constantly practise the medical profession;

(*i*) Persons employed in the Post-office and Telegraph Departments;

(*j*) Persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641;

(*k*) Other

(*k*) Other persons exempted by the Local Government from liability to serve as jurors or assessors.

List of jurors and assessors.

321. The Sessions Judge, and the Collector of the District or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

The list shall contain the name, place of abode and quality or business of every such person; and if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the Court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the Sessions Court-house, and at a time to be mentioned in the notice.

Revision of list.

324. For the hearing of such objections, the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid,

aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

325. The list so prepared and revised shall be again revised once in every year. Annual revision of list.

The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

326. The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial. District Magistrate to summon jurors and assessors.

The names of the persons to be summoned shall be drawn by lot in open Court, excluding those on the revised list who have served within six months, unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary. Power to summon another set of jurors or assessors.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror Form and service of summons.

juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. Where any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears, on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Court may excuse attendance of juror or assessor.

330. The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

List of jurors and assessors attending.

331. At each session, the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

Such list shall be kept with the list of the jurors and assessors as revised under section 324.

A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

332. Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable, by order of the Court of Session, to a fine not exceeding one hundred rupees.

Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

In default of recovery of the fine by such attachment and sale, such juror or assessor may by order of the Court of Session be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special

L.—Special Provisions for High Courts.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Power of Advocate-General to stay prosecution.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Time of holding sittings.

335. The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

Place of holding sittings.

But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Notice of sittings.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214, who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court,

Place of trial of European British subjects.

or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

CHAPTER XXIV.

General Provisions as to Inquiries and Trials.

Tender of pardon to accomplice.

337. In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate, a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor in the commission thereof.

Every person accepting a tender under this section shall be examined as a witness in the case.

Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate

Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

Right of accused to be defended.

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Procedure where accused does not understand proceedings.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Power to examine the accused.

342. For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

The accused shall not render himself liable to punishment

punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

No oath shall be administered to the accused.

No influence to be used to induce disclosures.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

Power to postpone or adjourn proceedings.

344. If, from the absence of a witness or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, by order in writing, stating the reasons therefor, from time to time postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Remand.

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

Reasonable cause for remand.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Compounding offences.

345. The offences punishable under the sections of the Indian Penal Code described in the first two columns of the Table next following may be compounded

pounded by the persons mentioned in the third column of that Table :—

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, &c., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force ...	352, 355, 358.	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour ...	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal Breach of Contract of service ...	490, 491, 492.	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman	498	
Defamation	500	The person defamed.
Printing or engraving matter knowing it to be defamatory	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter	502	

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Insult intended to provoke a breach of the peace	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years	506	The person intimidated.

The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, section 335, section 337, or section 338 of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused.

When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

The composition of an offence under this section shall have the effect of an acquittal of the accused.

No offence not mentioned in this section shall be compounded.

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. If, in the course of an inquiry or a trial before a Magistrate in any district outside the Presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate, or to such other

other Magistrate, having jurisdiction, as the District Magistrate directs.

The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when after commencement of inquiry or trial Magistrate finds case should be committed.

347. If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall ordinarily, if the Magistrate before whom he is accused considers him an habitual offender, be committed to the Court of Session or High Court, as the case may be; or, in districts in which the District Magistrate has been invested with powers under section 30, placed on his trial before such Magistrate.

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Sub-divisional Magistrate to whom he is subordinate.

The

The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence; and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law: provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) In any trial, the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard:

(*b*) The High Court, or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate, may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby; and may order a new inquiry or trial.

Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

351 Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination, for any offence of which such Court can take cognizance and which, from the evidence, he may

may appear to have committed; and may be proceeded against as though he had been arrested or summoned.

When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses reheard.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them: Courts to be open.

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

Of the Mode of taking and recording Evidence in Inquiries and Trials.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader. Evidence to be taken in presence of accused.

354. In inquiries and trials (other than summary trials) under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner. Manner of recording evidence outside Presidency-towns.

355. In summons-cases tried before a Magistrate, other than a Presidency Magistrate, and in cases of the offences mentioned in section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, the Magistrate shall make a memorandum Record in summons-cases, and in trials of certain offences by first and second class Magistrates.

randum of the substance of the evidence of each witness as the examination of the witness proceeds.

Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside Presidency-towns.

356. In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XII and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. The Local Government may direct that in any district or part of a district, or in proceedings before

before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall in the cases referred to in section 356 be taken down by the Sessions Judge or Magistrate with his own hand and in his mother-tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection

objection made to it by the witness, and shall add such remarks as he thinks necessary.

If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his pleader.

361. Whenever any evidence is given in a language not understood by the accused and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it shall be interpreted to such pleader in that language.

When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

362. In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

364. Whenever

364. Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Panjáb, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English; and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers. Examination of accused how recorded.

When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself, he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds, to make a memorandum thereof in the language of the Court, or in English, if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

365. Every High Court established by Royal Charter and the Chief Court of the Panjáb may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take Record of evidence in High Court.

take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court either immediately or at some subsequent time of which due notice shall be given to the parties or their pleaders; and the accused shall, if in custody, be brought up, or if not in custody shall be required to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be pronounced in the presence of his pleader.

Language of judgment.

Contents of judgment.

367. Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon, and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it.

It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

Judgment in alternative.

When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment

punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

368. When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead. Sentence of death.

No sentence of transportation shall specify the place to which the person sentenced is to be transported. Sentence of transportation.

369. No Court, other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in section 395 or to correct a clerical error. Court not to alter judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:— Presidency Magistrate's judgment.

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

371. ~~The judgment shall be explained to the accused, and on his application~~ a copy of the judgment, or, when he so desires, a translation in his own language, if practicable, or in the language of the Court, Judgment to be explained and copy given to accused.

Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

CHAPTER XXVII.

Of the Submission of Sentences for Confirmation.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

375. If when such proceedings are submitted the High Court thinks that a further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assess-

ors

ors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of

of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34

380. When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge for confirmation, such Sessions Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken.

Unless the Court of Sessions otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

When the inquiry and the evidence (if any) are not made and taken by the Court of Sessions, the result of such inquiry and the evidence shall be certified to such Court.

CHAPTER XXVIII.

Of Execution.

Execution of order passed under section 376

381. When a sentence of death passed by a Court of Session is submited to the High Court for confirmation, such Court of Session shall, on receiving the order of confirmation or other order of the High Court

Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may commute the sentence to transportation for life.

Postponement of capital sentence on pregnant woman.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Execution of sentences of transportation or imprisonment in other cases.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Direction of warrant for execution.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant with whom to be lodged.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Warrant for levy of fine.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorize the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Effect of such warrant.

388. When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his

Suspension of execution of sentence of imprisonment.

executing

executing a bond, with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping, in addition to imprisonment.

391. When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court: but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

The whipping shall be inflicted in the presence of the officer in charge of the jail: unless the Judge or Magistrate orders it to be inflicted in his own presence.

Mode of inflicting punishment.

392. In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

In no case shall such punishment exceed thirty stripes.

Not to be executed by instalments. Exemptions.

393. No sentence of whipping shall be executed by instalments; and none of the following persons shall be punishable with whipping (namely):—

(*a*) females;

(*b*) males

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty-five years of age.

394. The punishment of whipping shall not be inflicted unless a Medical Officer, if present, certifies, or, if there is not a Medical Officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Whipping not to be inflicted if offender not in fit state of health.

If, during the execution of a sentence of whipping, a Medical Officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Stay of execution.

395. In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

Procedure if punishment cannot be inflicted under section 394.

Nothing in this section shall be deemed to authorize any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

396. When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

Execution of sentences on escaped convicts.

If the new sentence is severer in its quality than the sentence which such convict was undergoing when

he

he escaped, the new sentence shall take effect immediately.

When the new sentence is not severer in its quality than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Saving as to sections 396 and 397.

398. Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

399. When

399. When any person under the age of sixteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry, or which is kept by a person willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

Confinement of youthful offenders in reformatories.

All persons confined under this section shall be subject to the rules so prescribed.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

Return of warrant on execution of sentence.

CHAPTER XXIX.

Of Suspensions, Remissions and Commutations of Sentences.

401. When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions, or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

Power to suspend or remit sentences.

Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

If the person in whose favour a sentence has been suspended or remitted fails to fulfil the conditions prescribed by the Governor General in Council or the Local Government, the Governor General in Council or the Local Government, as the case may be, may cancel such suspension or remission, whereupon such person may, if at large, be arrested by any Police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

Power to commute punishment.

402. The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, paragraph one.

A person convicted of any offence constituted by any act causing consequences which, together with such

such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused, or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

Illustrations.

(*a*) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph three of this section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A,

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court, may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for good behaviour.

406. Any person required by a Magistrate, other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour under section 118, may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

407. Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such Subordinate Magistrate, or if already presented to the District Magistrate shall be transferred to such Subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

408. Any

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session:

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

Provided as follows:—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional or Joint Sessions Judge.

Appeals to Court of Session how heard.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional or a Joint Sessions Judge may appeal to the High Court.

Appeal from sentence of Court of Session.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

Appeal from sentence of Presidency Magistrate.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or a Presidency Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in certain cases when accused pleads guilty.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

No appeal in petty cases.

Explanation.

Explanation.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate in default of payment of fine when no substantive sentence of imprisonment has been passed.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in cases tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

Explanation.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on what matters admissible.

418. An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

Explanation.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied

accompanied by a copy of the judgment or order appealed against, and, in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary rejection of appeal.

421. On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may reject the appeal summarily: provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Before rejecting an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

422. If the Appellate Court does not reject the appeal summarily, it shall cause notice to be given to the appellant or his pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423. The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the

the case may be, or find him guilty and pass sentence on him according to law ;

(*b*) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court, or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or (3) with or without such reduction, and with or without altering the finding, alter the nature of the sentence, but not so as to enhance the same ;

(*c*) in an appeal from any other order, alter or reverse such order :

(*d*) Nothing herein contained shall authorize the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court :

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High

High Court; and, if necessary, the record shall be amended in accordance therewith.

426. Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

Suspension of sentence pending appeal. Release of appellant on bail.

The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Arrest of accused in appeal from acquittal.

428. In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

Appellate Court may take further evidence or direct it to be taken.

When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

The taking of evidence under this section shall

for

for the purposes of Chapter XXV be deemed to be an inquiry.

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference; and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. When a question has been so referred, the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction

434. When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the

the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial. of High Court.

If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail, Procedure when question reserved.

and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

435. The High Court or any Court of Session, or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any inferior Criminal Court situate within the local limits of its or his jurisdiction, for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court. Power to call for records of inferior Courts.

If any Sub-divisional Magistrate acting under this section considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

436. When, on examining the record of any case under section 435 or otherwise, the Court of Session or District Magistrate considers that such case is triable exclusively by the Court of Session, and that an accused person has been improperly discharged Power to order commitment.

by

by the inferior Court, the Court of Session or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Court of Session or District Magistrate, improperly discharged:

Provided as follows—

(*a*) that the accused has had an opportunity of showing cause to such Court or Magistrate why the commitment should not be made:

(*b*) that, if such Court or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such Court or Magistrate may direct the inferior Court to inquire into such offence.

Power to order inquiry.

437. On examining any record, under section 435 or otherwise, the High Court or Court of Session may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged.

Report to High Court.

438. The Court of Session or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and if the accused is in confinement that he be released on bail or on his own bond.

High Court's powers of revision.

439. In the case of any proceeding the record of which has been called for by itself, or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of appeal by sections 195, 423, 426, 427 and 428, or on a Court by section 338, and may enhance the sentence, and,

and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

Nothing in this section applies to an entry made under section 273, or shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision: provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, paragraph two.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conform-

able

able to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrates who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Sessions Judge to be an European British subject. Assistant Sessions Judge to have held office for three years and to be specially empowered.

444. No Judge presiding in a Court of Session shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and, if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Cognizance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by Provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a Presidency Magistrate shall pass any sentence on an European

European British subject other than imprisonment for a term which may extend to three months or fine which may extend to one thousand rupees, or both.

When commitment is to be to Court of Session and when to High Court.

447. When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences which may be passed by Court of Session.

449. Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

If, at any time after the commitment and before signing judgment, the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinion to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

Procedure when Sessions Judge is not an European British subject.

450. If the Judge of the Sessions Division within which the offence is ordinarily triable is not an European British subject, the case shall be reported by the committing Magistrate for the orders of the highest

highest Court of criminal appeal for the province within which such division is situate.

In British Burma the Court of the Recorder of Rangoon shall, for the purposes of this section, be deemed to be the highest Court of criminal appeal.

Mixed jury for trial of European British subjects.

451. In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, or by a mixed set of assessors, not less than half the number of the jurors or assessors shall be Europeans or Americans, or both Europeans and Americans.

Trial of European British subject and Native jointly accused.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

When native may claim separate trial.

Provided that, if the European British subject requires under section 451 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

Procedure on claim of person to be dealt with as European British subject.

453. When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

When

When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further inquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

Failure to plead status a waiver.

454. If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject, and shall not assert it in any subsequent stage of the same case.

Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

Trial under this chapter of person not an European British subject.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained, or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the

the person detaining him to bring him before the High Court to abide such further order as it may pass.

Procedure on such application.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Territories throughout which High Court may issue such orders.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

459. Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

Nothing in this section shall be deemed to authorize any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate not being a Justice of the Peace or on any Magistrate or Sessions Judge outside the Presidency-towns not being an European British subject.

Jury for trial of Europeans or Americans.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury when European or American charged

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American, and in compli-

ance

ance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

jointly with one of another race.

462. When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section 451 or section 460, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

Summoning and empanelling jurors under section 451 or 460.

The Court shall also at the same time in like manner cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

From the whole number of persons returned, the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

Conduct of criminal proceedings against European British subjects, &c.

CHAPTER XXXIV.

LUNATICS.

464. When a Magistrate holding an inquiry or a trial

Procedure

in case of accused being lunatic.

trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the District or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury or the Court with the aid of assessors shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

Release of lunatic pending investigation or trial.

466. Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

If the case is one in which bail may not be taken, or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable

able place of safe custody, and the Magistrate or Court shall give effect to such order.

467. Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

Resumption of inquiry or trial.

When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

468. If, when the accused appears or is again brought before the Magistrate or the Court, as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

Procedure on accused appearing before Magistrate or Court.

If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

When accused appears to have been insane.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature

Judgment of acquittal on ground of lunacy.

of

of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be kept in safe custody.

471. Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

Lunatic prisoners to be visited by Inspector General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section

474. If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their

their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a commission, consisting of a judicial and two medical officers.

466 or 471 is declared fit to be discharged.

Such commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

475. Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

Delivery of lunatic to care of relative.

Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

476. When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any

Procedure in cases mentioned in section 195.

any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

Such Magistrate shall thereupon proceed according to law, and may, if he is authorized under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

Power of Court of Session as to such offences committed before itself.

477. Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil and Revenue Courts to complete investigation and commit to High Court or Court of Session.

478. When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

For the purposes of an inquiry under this section, the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

479. When

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorized to commit for trial; and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure of Civil Court in such cases.

480. When any such offence as is described in section 175, section 178, section 179, section 180, or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

Procedure in certain cases of contempt.

Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

481. In every such case, the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

Record in such cases.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

482. If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should

Procedure where Court considers that case should not be dealt with under section 480.

should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any witness before a Criminal Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482,

482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

486. Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

An appeal from such conviction by a Court of Small Causes in a Presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the Sessions Division within which such Court is situate.

An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the Presidency-towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing

any

any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Subdivisional Magistrate, or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

Such allowance shall be payable from the date of the order.

Enforcement of order.

If any person so ordered willfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month:

Proviso.

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her; and may make an order under this section notwithstanding such offer, if he is satisfied that such person is living in adultery, or that he has habitually treated his wife with cruelty.

No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses

refuses to live with her husband, or if they are living separately by mutual consent.

On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed in the case of summons-cases.

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit, provided the monthly rate of fifty rupees be not exceeded.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order shall be enforceable by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

491. Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any Commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

Nothing in this section applies to persons detained under Bengal Regulation III of 1818, Madras Regulation II of 1819 or Bombay Regulation XXV of 1827, or the Acts of the Governor General in Council No. XXXIV of 1850 or No. III of 1858.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

In

In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Sub-divisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Public Prosecutor may plead in all Courts in cases under his charge.

Pleaders, privately instructed, to be under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Effect of withdrawal from prosecution.

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Permission to conduct prosecution.

495. Any Magistrate inquiring into or trying any case may permit any person other than an officer of police below the rank of Police Inspector to conduct the prosecution; but no person, other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

Any person conducting the prosecution may do so personally or by a pleader.

CHAPTER XXXIX.

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

When bail may be taken in case of non-bailable offence.

497. When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a Police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the

the bail required by a Police-officer or Magistrate be reduced.

499. Before any person is released on bail or released on his own bond, a bond for such sum of money as the Police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and when he is released on bail, by one or more sufficient sureties, conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the Police-officer or Court, as the case may be. Bond of accused and sureties.

If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

500. As soon as the bond has been executed, the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him. Discharge from custody.

Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to jail. Power to order sufficient bail when that first taken is insufficient.

502. All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants. Discharge of sureties.

On such application being made, the Magistrate shall issue his warrant of arrest, directing that the person so released be brought before him.

On

On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

Of Commissions for the Examination of Witnesses.

When attendance of witness may be dispensed with.

503. Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

When the witness resides in the dominions of any Prince or State in alliance with Her Majesty in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such M[illegible]trate of [illegible] first class as he appoints in this b[illegible] hall [illegible] to the place where the witness i[illegible] all s[illegible] the witness before him, and shall [illegible] ence in the same manner, and may [illegible] rcise the same powers, as in trials [illegible] ıder this Code.

Commission in case of witness being within Presidency-town.

5[illegible] is within the local limits of the [illegible] Presidency Magistrate, the Mag[illegible] ng the commission may direct the

the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

Parties may examine witness.

505. The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of Provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions,

exceptions, be read in evidence in the case by either party, and shall form part of the record.

Adjournment of inquiry or trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.

Power to summon medical witness.

The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of the Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Previous conviction or acquittal how proved.

511. In any inquiry, trial or other proceeding under this Code a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production

production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

CHAPTER XLII.

Provisions as to Bonds.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

Procedure on forfeiture of bond.

514. Whenever it is proved to the satisfaction of the Court by which a bond under this Code has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

If

If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person.

Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorize the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate within the local limits of whose jurisdiction such property is found.

If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

Appeals from, and revision of, orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

CHAPTER XLIII.

Of the Disposal of Property.

Order for disposal of property regarding which offence committed.

517. When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

When a High Court or a Court of Session makes such order and cannot through its own officers conveniently

conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

When an order is made under this section in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

Explanation.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Order may take form of reference to District or Sub-divisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Sub-divisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section

section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court; and may modify, alter or annul such order.

Destruction of libellous and other matter.

521. On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which the conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted.

The Court may in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed.

Power to restore possession of immoveable property.

522. Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that, by such force, any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. The seizure by any Police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it, and shall, in such case, issue a proclamation specifying

cifying the articles of which such property consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where no claimant appears within six months.

524. If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate ,or of a Magistrate of the first class empowered by the Local Government in this behalf.

In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

CHAPTER XLIV.

Of the Transfer of Criminal Cases.

High Court may transfer case, or itself try it.

526. Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses,

it may order—

(1) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(2) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction; or

(3) that any particular criminal case or appeal be transferred to and tried before itself.

When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

Nothing in this section shall be deemed to affect any order made under section 197.

527. The

527. The Governor General in Council may, by notification in the *Gazette of India*, direct the transfer of any particular criminal case or appeal from one High Court to another High Court, or from any Criminal Court subordidate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

Power of Governor General in Council to transfer criminal cases and appeals.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

528. Any District Magistrate or Sub-divisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

District or Sub-divisional Magistrate may withdraw or refer cases.

The Local Government may authorize the District Magistrate to withdraw from the Magistrates subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

Power to authorize District Magistrate to withdraw classes of cases.

CHAPTER XLV.

Of Irregular Proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely:—

Irregularities which do not vitiate proceedings.

(*a*) to issue a search-warrant, under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to

(*e*) to take cognizance of an offence under section 191, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf, does any of the following things (namely):—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*) makes an order, under section 133, as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII;

(*k*) takes cognizance, under section 191, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises

(*o*) revises under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily; or

(*r*) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong Sessions Division, District, Sub-division or other local area, unless it appears that such error occasioned a failure of justice.

When irregular commitments may be validated.

532. If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment, and direct a fresh inquiry by a competent Magistrate.

Non-compliance with provisions of section 164 or 364.

533. If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that the provisions of such section have not been fully complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

534. An

Omission to ask question prescribed by section 454, clause 2.

534. An omission to ask any person whether he is an European British subject in a case to which the second clause of section 454 applies shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

of any error, omission or irregularity in the complaint, summons, warrant, charge, judgment or other proceedings before or during trial or in any inquiry or other proceeding under this Code, or

of the want of any sanction required by section 195, or

of the omission to revise any list of jurors or assessors in accordance with section 324, or

of any misdirection in any charge to a jury; unless such error, omission, irregularity, want or misdirection has occasioned a failure of justice.

Distress not

538. No distress made under this Code shall be deemed

deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

illegal nor distrainer a trespasser for defect or want of form in proceedings.

CHAPTER XLVI.

MISCELLANEOUS.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in Chancery in England or Ireland, or any Magistrate authorized to take affidavits or affirmations in Scotland.

Courts and persons before whom affidavits may be sworn.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

Power to summon material witness, or examine person present.

541. Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

Power to appoint place of imprisonment.

542. Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

The

The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound tointerpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesses.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine.

545. Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may when passing judgment order the whole or any part of the fine recovered to be applied—

(*a*) in defraying expenses properly incurred in the prosecution;

(*b*) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

548. If

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury, or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith: provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Copies of proceedings.

549. The Governor General in Council may make rules, consistent with this Code and the Army Act, 1881, or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when any person is brought before a Magistrate and charged with an offence for which he is liable, under the Army Act, 1881, section 41, to be tried by a Court-martial, such Magistrate shall have regard to such rules, and shall in proper cases deliver him, together with a statement of the offence of which he is accused, to the commanding officer of the regiment, corps or detachment to which he belongs, or to the commanding officer of the nearest military station, for the purpose of being tried by Court-martial.

Delivery to Military authorities of persons liable to be tried by Court-martial.

Every Magistrate shall, on receiving a written application for that purpose by the commanding officer or any body of troops stationed or employed at any such place, use his utmost endeavours to apprehend and secure any person accused of such offence.

Apprehension of such persons.

550. Police-officers superior in rank to an officer in charge of a Police-station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Powers of superior officers of police.

551. Upon complaint made to a Presidency Magistrate or District Magistrate on oath of the abduction or unlawful detention of a woman, or of a female child under the age of fourteen years, for any unlawful purpose, he may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person

Power to compel restoration of abducted females.

person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary.

Compensation to person groundlessly given in charge in Presidency-town.

552. Whenever any person causes a Police-officer to arrest another person in a Presidency-town, if it appears to the Magistrate by whom the case is heard that there was no sufficient ground for causing such arrest, the Magistrate may award such compensation, not exceeding fifty rupees, to be paid by the person so causing the arrest to the person so arrested for his loss of time and expenses in the matter, as the Magistrate thinks fit.

In such cases, if more persons than one are arrested ~~or complained~~ against, the Magistrate may, in like manner, award to each of them such compensation, not exceeding fifty rupees, as such Magistrate thinks fit.

All compensation awarded under this section may be recovered as if it were a fine, and, if it cannot be so recovered, the person by whom it is payable shall be sentenced to simple imprisonment for such term not exceeding thirty days as the Magistrate directs, unless such sum is sooner paid.

Power of chartered High Courts to make rules for inspection of records of subordinate Courts.

553. With the previous sanction of the Governor General in Council, the High Court at Fort William, and, with the previous sanction of the Local Government, any other High Court established by Royal Charter, may, from time to time, make rules for the inspection of the records of subordinate Courts.

Power of other High Courts to make rules for other purposes.

Every High Court not established by Royal Charter may, from time to time, and with the previous sanction of the Local Government,

(*a*) make rules for keeping all books, entries and accounts to be kept in all Criminal Courts subordinate to it, and for the preparation and transmission of any returns or statements to be prepared and submitted by such Courts;

(*b*) frame forms for every proceeding in the said Courts for which it thinks that a form should be provided;

(*c*) make

(*c*) make rules for regulating its own practice and proceedings and the practice and proceedings of all Criminal Courts subordinate to it; and

(*d*) make rules for regulating the execution of warrants issued under this Code for the levy of fines:

Provided that the rules and forms made and framed under this section shall not be inconsistent with this Code or any other law in force for the time being.

All rules made under this section shall be published in the local official Gazette.

Forms.

554. Subject to the power conferred by section 553, and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fifth schedule with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Case in which Judge or Magistrate is personally interested.

555. No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation.—A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.

Power to decide language of Courts.

556. The Local Government may determine what, for the purposes of this Code, shall be deemed to be the language of each Court within the territories administered by such Government, other than the High Courts established by Royal Charter.

Powers of Governor General in Council and Local Government exercisable from time to time.

557. All powers conferred by this Code on the Governor General in Council or on the Local Government may be exercised, from time to time as occasion requires.

Pending cases.

558. The provisions of this Code shall apply, so far as may be, to all cases pending in any Criminal Court when this Code comes into force.

SCHEDULE I.

SCHEDULE I—*continued.*

ENACTMENTS REPEALED.

(*a*).—*Statute.*

Year, reign and chapter.	Title.	Extent of repeal.
13 Geo. III, chapter 63...	An Act for establishing certain regulations for the better management of the affairs of the East India Company, as well in India as in Europe.	Section 38.

(*b*).—*Acts of the Governor General in Council.*

Number and year.	Subject.	Extent of repeal.
XXIII of 1840 ...	Execution of process	So much as has not been repealed.
XLV of 1860 ...	Penal Code	The illustrations to section 214.
V of 1861 ...	Police Act	Section 6 and the last nine words of section 24. Section 35, down to and including the words "Provided that."
XVIII of 1862 ...	Criminal Procedure, Supreme Courts	So much as has not been repealed.
VI of 1864 ...	Whipping	Section 7.
II of 1869 ...	Justices of the Peace	So much as has not been repealed.
XXII of 1870 ...	Application to European British subjects of Acts conferring summary jurisdiction.	So much as has not been repealed.
IV of 1872 ...	Panjáb Laws	So far as it relates to Bengal Regulation XX of 1825.
X of „ ...	The Code of Criminal Procedure ...	So much as has not been repealed.
XI of 1874 ...	Amending the Code of Criminal Procedure.	The whole.

SCHEDULE 1—*continued.*

ENACTMENTS REPEALED,—*continued.*

(*b*).—*Acts of the Governor General in Council*—(continued).

Number and year.	Subject.	Extent of repeal.
XV of 1874 ...	Laws Local Extent	So far as it relates to Bengal Regulation XX of 1825.
X of 1875 ...	High Courts' Criminal Procedure ...	The whole Act, except section 144 and so much of section 146 as relates to informations.
XX of 1875 ...	Central Provinces Laws ...	So far as it relates to Bengal Regulation XX of 1825.
XVIII of 1876 ...	Oudh Laws	Ditto.
IV of 1877 ...	Presidency Magistrates ...	The whole Act, except section 57.
XXI of 1879 ...	Extradition	Chapter III.
X of 1881 ...	Coroners	Sections 8 and 9.

(*c*).—*Regulations.*

Number and year.	Subject.	Extent of repeal.
Bengal Regulation XX of 1825.	Jurisdiction of Courts Martial ...	So much as has not been repealed.
III of 1872 ...	Santhál Parganas Settlement ...	So far as it relates to Act X of 1872.
IX of 1874 ...	Arakan Hills District Laws ...	So far as it relates to Acts II of 1869, X of 1872 and XI of 1874.
III of 1877 ...	Ajmer Laws	So far as it relates to Bengal Regulation XX of 1825.

(*d*).—*Act of the Governor of Fort St. George in Council.*

Number and year.	Subject.	Extent of repeal.
VIII of 1867 ...	Police	Section 9.

SCHEDULE II.

TABULAR STATEMENT OF OFFENCES.

EXPLANATORY NOTE.—The entries in the second and seventh columns of this schedule, headed respectively "Offence" and "Punishment under the Indian Penal Code", are not intended as definitions of the offences and punishments described in the several corresponding sections of the Indian Penal Code, or even as abstracts of those sections, but merely as references to the subject of the section, the number of which is given in the first column.

The third column of this schedule applies to the police in the towns of Calcutta and Bombay.

CHAPTER V.—ABETMENT.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
109	Abetment of any offence, if the act abetted is committed in consequence, and where no express provision is made for its punishment.	May arrest without warrant, if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	The same punishment as for the offence abetted.	The Court by which the offence abetted is triable.
110	Abetment of any offence, if the person abetted does the act with a different intention from that of the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.

111	Abetment of any offence, when one act is abetted and a different act is done; subject to the proviso.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence intended to be abetted.	Ditto.
113	Abetment of any offence, when an effect is caused by the act abetted different from that intended by the abettor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	The same punishment as for the offence committed.	Ditto.
114	Abetment of any offence, if abettor is present when offence is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
115	Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment either description for 7 years and fine.	Ditto.
	If an act which causes harm be done in consequence of the abetment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
116	Abetment of an offence punishable with imprisonment, if the offence be not committed in conquence of the abetment.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
	If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER V.—ABETMENT—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
117	Abetting the commission of an offence by the public, or by more than ten persons.	May arrest without warrant if arrest for the offence abetted may be made without warrant, but not otherwise.	According as a warrant or summons may issue for the offence abetted.	According as the offence abetted is bailable or not.	According as the offence abetted is compoundable or not.	Imprisonment of either description for 3 years, or fine, or both.	The Court by which the offence abetted is triable.
118	Concealing a design to commit an offence punishable with death or transportation for life, if the offence be committed.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
119	A public servant concealing a design to commit an offence which it is his duty to prevent, if the	Ditto ...	Ditto ...	According as the offence abetted is bailable or	Ditto ...	Imprisonment extending to half of the longest term, and of any description, provided for the offence,	Ditto.

	offence be comitted.			not.		or fine, or both.	
	If the offence be punishable with death or transportation for life.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Imprisonment of either description for 10 years.	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	According as the offence abetted is bailable or not.	Ditto ...	Imprisonment extending to a quarter part of the longest term, and of any description, provided for the offence, or fine, or both.	Ditto.
120	Concealing a design to commit an offence punishable with imprisonment, if the offence be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the offence be not committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment extending to one-eighth part of the longest term, and of the description, provided for the offence, or fine, or both.	Ditto.

CHAPTER VI.—OFFENCES AGAINST THE STATE.

121	Waging or attempting to wage war, or abetting the waging of war, against the Queen.	Shall not arrest without warrant.	Warrant ..	Not bailable	Not compoundable.	Death, or transportation for life, and forfeiture of property.	Court of Session.
121A	Conspiring to commit certain offences against the State.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or any shorter term, or imprisonment of either description for 10 years.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VI.—OFFENCES AGAINST THE STATE—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
122	Collecting arms, &c., with the intention of waging war against the Queen.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and forfeiture of property.	Court of Session.
123	Concealing with intent to facilitate a design to wage war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
124	Assaulting Governor General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.	Shall not arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
124A	Exciting, or attempting to excite, disaffection.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life or for any term and fine, or imprisonment of either description for 3 years and fine, or fine.	Ditto.

125	Waging war against any Asiatic Power in alliance or at peace with the Queen, or abetting the waging of such war.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life and fine, or imprisonment of either description for 7 years and fine, or fine.	Ditto.
126	Committing depredation on the territories of any Power in alliance or at peace with the Queen.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine, and forfeiture of certain property.	Ditto.
127	Receiving property taken by war or depredation mentioned in sections 125 and 126.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
128	Public servant voluntarily allowing prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
129	Public servant negligently suffering prisoner of State or War in his custody to escape.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
130	Aiding escape of, rescuing or harbouring, such prisoner, or offering any resistance to the recapture of such prisoner.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER VII.—OFFENCES RELATING TO THE ARMY AND NAVY.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
131	Abetting mutiny, or attempting to seduce an officer, soldier or sailor from his allegiance or duty.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
132	Abetment of mutiny, if mutiny is committed in consequence thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
133	Abetment of an assault by an officer, soldier or sailor on his superior officer, when in the execution of his office.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
134	Abetment of such assault, if the assault is committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

135	Abetment of the desertion of an officer, soldier or sailor.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
136	Harbouring such an officer, soldier or sailor who has deserted.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
137	Deserter concealed on board merchant-vessel, through negligence of master or person in charge thereof.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.
138	Abetment of act of insubordination by an officer, soldier or sailor, if the offence be committed in consequence.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
140	Wearing the dress or carrying any token used by a soldier, with intent that it may be believed that he is such a soldier.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

143	Being member of an unlawful assembly.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
144	Joining an unlawful assembly armed with any deadly weapon.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
145	Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.	May arrest without warrant.	Warrant ...	Bailable	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
147	Rioting ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
148	Rioting, armed with a deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
149	If an offence be committed by any member of an unlawful assembly, every other member of such assembly shall be guilty of the offence.	According as arrest may be made without warrant for the offence or not.	According as a warrant or summons may issue for the offence.	According as the offence is bailable or not.	Ditto ...	The same as for the offence.	The Court by which the offence is triable.

150	Hiring, engaging or employing persons to take part in an unlawful assembly.	May arrest without warrant.	According to the offence committed by the person hired, engaged or employed.	Ditto ...	Ditto ..	The same as for a member of such assembly, and for any offence committed by any member of such assembly.	Ditto.
151	Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.	Ditto ..	Summons ...	Bailable ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
152	Assaulting or obstructing public servant when suppressing riot, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
153	Wantonly giving provocation with intent to cause riot, if rioting be committed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	If not committed ...	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
154	Owner or occupier of land not giving information of riot, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ..	Ditto ...	Fine of 1,000 rupees ...	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER VIII.—OFFENCES AGAINST THE PUBLIC TRANQUILLITY—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
155	Person for whose benefit or on whose behalf a riot takes place not using all lawful means to prevent it.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Fine	Presidency Magistrate or Magistrate of the first or second class.
156	Agent of owner or occupier for whose benefit a riot is committed not using all lawful means to prevent it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
157	Harbouring persons hired for an unlawful assembly.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
158	Being hired to take part in an unlawful assembly or riot.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	Or to go armed ...	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

160	Committing affray ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Any Magistrate.

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

161	Being or expecting to be a public servant, and taking a gratification other than legal remuneration in respect of an official act.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
162	Taking a gratification in order by corrupt or illegal means to influence a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
163	Taking a gratification for the exercise of personal influence with a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
164	Abetment by public servant of the offences defined in the last two preceding clauses with reference to himself.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
165	Public servant obtaining any valuable thing, without consideration, from a person concerned in any proceeding or business transacted by such public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER IX.—OFFENCES BY OR RELATING TO PUBLIC SERVANTS—*concluded.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
166	Public servant disobeying a direction of the law with intent to cause injury to any person.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
167	Public servant framing an incorrect document with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
168	Public servant unlawfully engaging in trade.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
169	Public servant unlawfully buying or bidding for property.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both, and confiscation of property, if purchased.	Ditto.
170	Personating a public ser-	May arrest	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either de-	Any Magis-

	vant.	without warrant.				scription for 2 years, or fine, or both.	trate.
171	Wearing garb or carrying token used by public servant with fraudulent intent.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

172	Absconding to avoid service of summons or other proceeding from a public servant.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonmont for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
	If summons or notice require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
173	Preventing the service or the affixing of any summons or notice, or the removal of it when it has been affixed, or preventing a proclamation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If summons, &c., require attendance in person, &c., in a Court of Justice.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
174	Not obeying a legal order to attend at a certain place in person or by agent, or departing therefrom without authority.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the order require personal attendance, &c., in a Court of Justice.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Any Magistrate.
175	Intentionally omitting to produce a document to a public servant by a person legally bound to produce or deliver such document.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
	If the document is required to be produced in	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000	Ditto.

	or delivered to a Court of Justice.					rupees, or both.	
176	Intentionally omitting to give notice or information to a public servant by a person legally bound to give such notice or information.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If the notice or information required respects the commission of an offence, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	Ditto.
177	Knowingly furnishing false information to a public servant.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Ditto	Ditto.
	If the information required respects the commission of an offence, &c.	Ditto	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
178	Refusing oath when duly required to take oath by a public servant.	Ditto ...	Ditto	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
179	Being legally bound to state truth, and refusing to answer questions.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapter XXXV; or, if not committed in a Court, a Presidency Magistrate or Magistrate of the first or second class.
180	Refusing to sign a statement made to a public servant when legally required to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 3 months, or fine of 500 rupees, or both.	Ditto.

181	Knowingly stating to a public servant on oath as true that which is false.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
182	Giving false information to a public servant in order to cause him to use his lawful power to the injury or annoyance of any person.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
183	Resistance to the taking of property by the lawful authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
184	Obstructing sale of property offered for sale by authority of a public servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Ditto.
185	Bidding by a person under a legal incapacity to purchase it, for property at a lawfully authorized sale, or bidding without intending to perform the obligations incurred thereby.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 month, or fine of 200 rupees, or both.	Ditto.
186	Obstructing public servant in discharge of his public functions.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER X.—CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
187	Omission to assist public servant when bound by law to give such assistance.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
	Wilfully neglecting to aid a public servant who demands aid in the execution of process, the prevention of offences, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine of 500 rupees, or both.	Ditto.
188	Disobedience to an order lawfully promulgated by a public servant, if such disobedience causes obstruction, annoyance or injury to persons lawfully employed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.
	If such disobedience causes danger to human life, health or safety, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.

189	Threatening a public servant with injury to him, or one in whom he is interested, to induce him to do or forbear to do any official act.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
190	Threatening any person to induce him to refrain from making a legal application for protection from injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Ditto.

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

193	Giving or fabricating false evidence in a judicial proceeding.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	Giving or fabricating false evidence in any other case.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
194	Giving or fabricating false evidence with intent to cause any person to be convicted of a capital offence.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
	If innocent person be thereby convicted and executed.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above. ...	Ditto.

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SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
195	Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation for life or with imprisonment for seven years or upwards.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	The same as for the offence	Court of Session.
196	Using in a judicial proceeding evidence known to be false or fabricated.	Ditto ...	Ditto ...	According as the offence of giving such evidence is bailable or not.	Ditto ...	The same as for giving or fabricating false evidence.	Court of Session, Presidency Magistrate or Magistrate of the first class.
197	Knowingly issuing or signing a false certificate relating to any fact of which such certificate is by law admissible in evidence.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	The same as for giving false evidence.	Ditto.

198	Using as a true certificate one known to be false in a material point.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
199	False statement made in any declaration which is by law receivable as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
200	Using as true any such declaration known to be false.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
201	Causing disappearance of evidence of an offence committed, or giving false information touching it to screen the offender, if a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or imprisonment for ten years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with less than 10 years' imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
202	Intentional omission to give information of an offence by a person legally bound to inform.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
203	Giving false information respecting an offence committed.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
204	Secreting or destroying any document to prevent its production as evidence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first class.
205	False personation for the purpose of any act or proceeding in a suit or criminal prosecution, or for becoming bail or security.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

206	Fraudulent removal or concealment, &c., of property to prevent its seizure as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
207	Claiming property without right, or practising deception touching any right to it, to prevent its being taken as a forfeiture, or in satisfaction of a fine under sentence, or in execution of a decree.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
208	Fraudulently suffering a decree to pass for a sum not due, or suffering decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	..	Ditto	Presidency Magistrate or Magistrate of the first class.
209	False claim in a Court of Justice.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years and fine.	Ditto.
210	Fraudulently obtaining a decree for a sum not due, or causing a decree to be executed after it has been satisfied.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
211	False charge of offence made with intent to injure.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If offence charged be capital, or punishable with transportation for life, or with imprisonment for a term exceeding 7 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
212	Harbouring an offender, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto ...
	If punishable with imprisonment for 1 year and not for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, pro-	Presidency Magistrate or Magistrate of

						vided for the offence, or fine, or both.	the first class, or Court by which the offence is triable.
213	Taking gift, &c, to screen an offender from punishment, if the offence be capital.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
214	Offering gift or restoration of property in consideration of screening offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If punishable with transportation for life or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If with imprisonment for less than 10 years.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
215	Taking gift to help to recover moveable property of which a person has been deprived by an offence, without causing apprehension of offender.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
216	Harbouring an offender who has escaped from custody, or whose apprehension has been ordered, if the offence be capital.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

	If punishable with transportation for life, or with imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Ditto.
	If with imprisonment for 1 year, and not for 10 years	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment for a quarter of the longest term, and of the description, provided for the offence, or fine, or both.	Presidency Magistrate or Magistrate of the first class, or Court by which the offence is triable.
216A							
217	Public servant disobeying a direction of law with intent to save person from punishment, or property from forfeiture.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
218	Public servant framing an incorrect record or writing with intent to save person from punishment, or property from forfeiture.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
219	Public servant in a judicial proceeding corruptly making and pronouncing an order, report, verdict or decision which he knows to be contrary to law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
220	Commitment for trial or confinement by a person having authority, who knows that he is acting contrary to law.	Shall not arrest without warrant.	Warrant ...	Bailable.	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
221	Intentional omission to apprehend on the part of a public servant bound by law to apprehend an offender, if the offence be capital.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If punishable with transportation for life or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, with or without fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If with imprisonment for less than 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, with or without fine.	Presidency Magistrate or Magistrate

							of the first or second class.
222	Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence of a Court of Justice, if under sentence of death.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 14 years, with or without fine.	Court of Session.
	If under sentence of transportation or penal servitude for life, or transportation, imprisonment or penal servitude for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, with or without fine.	Ditto.
	If under sentence of imprisonment for less than 10 years; or lawfully committed to custody.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
223	Escape from confinement negligently suffered by a public servant.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Simple imprisonment for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
224	Resistance or obstruction by a person to his lawful apprehension.	May arrest without warrant.	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XI.—FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
225	Resistance or obstruction to the lawful apprehension of another person, or rescuing him from lawful custody.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
	If charged with an offence punishable with transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If charged with a capital offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
	If the person is sentenced to transportation for life, or to transportation, penal servitude or imprisonment for 10 years or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

	If under sentence of death.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
225A	Escape, or attempt to escape, from custody for failing to furnish security for good behaviour.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for one year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
226	Unlawful return from transportation.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Transportation for life, and fine and rigorous imprisonment for 3 years before transportation.	Court of Session.
227	Violation of condition of remission of punishment.	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Punishment of original sentence, or, if part of the punishment has been undergone, the residue.	The Court by which the original offence was triable.
228	Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Simple imprisonment for 6 months, or fine of 1,000 rupees, or both.	The Court in which the offence is committed, subject to the provisions of Chapte XXXV.
229	Personation of a juror or assessor.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the firstclass.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
231	Counterfeiting, or performing any part of the process of counterfeiting, coin.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
232	Counterfeiting, or performing any part of the process of counterfeiting, the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
233	Making, buying or selling instrument for the purpose of counterfeiting coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
234	Making, buying or selling instrument for the purpose of counterfeiting the Queen's coin.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.

235	Possession of instrument or material for the purpose of using the same for counterfeiting coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If Queen's coin ...	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Court of Session.
236	Abetting in British India the counterfeiting out of British India of coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	The punishment provided for abetting the counterfeiting of such coin within British India.	Ditto.
237	Import or export of counterfeit coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
238	Impor to rexport of counterfeits of the Queen's coin, knowing the same to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.
239	Having any counterfeit coin known to be such when it came into possession, and delivering, &c., the same to any person.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
240	The same with respect to the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
241	Knowingly delivering to another any counterfeit coin as genuine which, when first possessed, the deliverer did not know to be counterfeit.	May arrest without warrant.	Warrant ...	Not bailable.	Not compoundable.	Imprisonment of either description for 2 years, or fine of ten times the value of the coin counterfeited, or both.	Presidency Magistrate or Magistrate of the first or second class.
242	Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
243	Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
244	Person employed in a Mint causing coin to be of a different weight or composition from that fixed by law.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.

245	Unlawfully taking from a Mint any coining instrument.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
246	Fraudulently diminishing the weight or altering the composition of any coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
247	Fraudulently diminishing the weight or altering the composition of the Queen's coin.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
248	Altering appearance of any coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years and fine.	Ditto.
249	Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
250	Delivery to another of coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 5 years and fine.	Ditto.
251	Delivery of Queen's coin possessed with the knowledge that it is altered.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 10 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
252	Possession of altered coin by a person who knew it to be altered when he became possessed thereof.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
253	Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
254	Delivery to another of coin as genuine which, when first possessed, the deliverer did not know to be altered.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of ten times the value of the coin.	Presidency Magistrate or Magistrate of the first or second class.
255	Counterfeiting a Government stamp.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

256	Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years and fine.	Ditto.
257	Making, buying or selling instrument for the purpose of counterfeiting a Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Ditto.
258	Sale of counterfeit Government stamp,	Ditto	...	Ditto	..	Ditto	...	Ditto	...	Ditto	Ditto.
259	Having possession of a counterfeit Government stamp.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
260	Using as genuine a Government stamp known to be counterfeit.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
261	Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it with intent to cause loss to Government.	Ditto	...	Ditto	...	Ditto	...	Ditto	...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
262	Using a Government stamp known to have been before used.	Ditto	...	Ditto	..	Ditto	...	Ditto	..	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XII.—OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
263	Erasure of mark denoting that stamp has been used.	May arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of of the first class.

CHAPTER XIII—OFFENCES RELATING TO WEIGHTS AND MEASURES.

264	Fraudulent use of false instrument for weighing.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
265	Fraudulent use of false weight or measure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
266	Being in possession of false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

267	Making or selling false weights or measures for fraudulent use.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS.

269	Negligently doing any act known to be likely to spread infection of any disease dangerous to life.	May arrest without warrant.	Summons ...	Bailable ..	Not compoundable.	Imprisonment of either description for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
270	Malignantly doing any act known to be likely to spread infection of any disease dangerous to life.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
271	Knowingly disobeying any quarantine rule.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Ditto.
272	Adulterating food or drink intended for sale, so as to make the same noxious.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
273	Selling any food or drink as food and drink knowing the same to be noxious.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
274	Adulterating any drug or medical preparation intended for sale so as to lessen its efficacy, or to change its operation, or to make it noxious.	Ditto .	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
275	Offering for sale or issuing from a dispensary any drug or medical preparation known to have been adulterated.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate, or Magistrate of the first or second class.
276	Knowingly selling or issuing from a dispensary any drug or medical preparation as a different drug or medical preparation.	Ditto ...	Ditto ...	Ditto.	Ditto ...	Ditto	Ditto.
277	Defiling the water of a public spring or reservoir.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
278	Making atmosphere noxious to health.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 500 rupees ...	Ditto.

279	Driving or riding on a public way so rashly or negligently as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
280	Navigating any vessel so rashly or negligently as to endanger human life, &c.	Ditto .	Ditto ...	Ditto ...	Ditto ...	Ditto	Presidency Magistrate or Magistrate of the first or second class.
281	Exhibition of a false light, mark or buoy.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.
282	Conveying for hire any person by water, in a vessel in such a state, or so loaded, as to endanger his life.	Ditto ...	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
283	Causing danger, obstruction or injury in any public way or line of navigation.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
284	Dealing with any poisonous substance so as to endanger human life, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Ditto.
285	Dealing with fire or any combustible matter so as to endanger human life, &c.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.
286	So dealing with any explosive substance.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XIV.—OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY AND MORALS—*concluded.*

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
287	So dealing with any machinery.	Shall not arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 6 months, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
288	A person omitting to guard against probable danger to human life by the fall of any building over which he has a right entitling him to pull it down or repair it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
289	A person omitting to take order with any animal in his possession, so as to guard against danger to human life, or of grievous hurt, from such animal.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Ditto	Any Magistrate.

290	Committing a public nuisance.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Fine of 200 rupees ...	Ditto.
291	Continuance of nuisance after injunction to discontinue.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 6 months, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
292	Sale, &c., of obscene books, &c.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine, or both.	Ditto.
293	Having in possession obscene book, &c., for sale or exhibition.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294	Obscene songs ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
294 A	Keeping a lottery-office ...	Shall not arrest without warrant.	Summons ...	Ditto ...	Ditto ...	Imprisonment of either description for 6 months, or fine, or both.	Any Magistrate.
	Publishing proposals relating to lotteries.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Fine of 1,000 rupees	Ditto.

CHAPTER XV.—OFFENCES RELATING TO RELIGION.

295	Destroying, damaging, or defiling a place of worship or sacred object with intent to insult the religion of any class of persons.	May arrest without warrant.	Summons ..	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XV.—OFFENCES RELATING TO RELIGION—*concluded.*

Of offences affecting life—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
296	Causing a disturbance to an assembly engaged in religious worship.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
297	Trespassing in place of worship or sepulchre, disturbing funeral, with intention to wound the feelings or to insult the religion of any person, or offering indignity to a human corpse.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto
298	Uttering any word or making any sound in the hearing, or making any gesture, or placing any object in the sight, of any person, with intention to wound his religious feeling.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Compoundable.	Ditto	Ditto

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY.

Of offences affecting life.

302	Murder	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Death, or transportation for life, and fine.	Court of Session.
303	Murder by a person under sentence of transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death	Ditto.
304	Culpable homicide not amounting to murder, if act by which the death is caused is done with intention of causing death, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	If act is done with knowledge that it is likely to cause death, but without any intention to cause death, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years, or fine, or both.	Ditto.
304 A	Causing death by rash or negligent act.	Ditto ...	Ditto ...	Bailable ...	Ditto ..	Imprisonment of either description for two years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
305	Abetment of suicide committed by a child, or insane or delirious person, or an idiot, or a person intoxicated.	Ditto ..	Ditto. ...	Not bailable	Ditto ...	Death, or transportation for life, or imprisonment for 10 years, and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of offences affecting life—concluded.

1	2	3	4	5	6		8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
306	Abetting the commission of suicide.	May arrest without warrant.	Warrant. ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
307	Attempt to murder ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.
	Attempt by life-convict to murder, if hurt is caused.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, or as above ...	Ditto.
308	Attempt to commit culpable homicide.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
	If such act cause hurt to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
309	Attempt to commit suicide.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for one year, or fine, or both.	Presidency Magistrate.

							or Magistrate of the first or second class.
311	Being a thug ...	Ditto ..	Ditto ...	Not bailable	Ditto ...	Transportation for life and fine.	Court of Session.

Of the Causing of Miscarriage; of Injuries to Unborn Children; of the Exposure of Infants; and of the Concealment of Births.

312	Causing miscarriage ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session.
	If the woman be quick with child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
313	Causing miscarriage without woman's consent.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
314	Death caused by an act done with intent to cause miscarriage.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If act done without woman's consent.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or as above.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of the Causing of Miscarriage; of Injuires to Unborn Children; of the Exposure of Infants; and of the Concealment of Births—concluded.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
315	Act done with intent to prevent a child being born alive, or to cause it to die after its birth.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years, or fine, or both.	Court of Session.
316	Causing death of a quick unborn child by an act amounting to culpable homicide.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
317	Exposure of a child under 12 years of age by parent or person having care of it, with intention of wholly abandoning it.	May arrest without warrant.	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years, or fine, or both.	Ditto.
318	Concealment of birth by secret disposal of dead body.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Hurt.

323	Voluntarily causing hurt ..	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Any Magistrate.
324	Voluntarily causing hurt by dangerous weapons or means.	May arrest without warrant.	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
325	Voluntarily causing grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Ditto.
326	Voluntarily causing grievous hurt by dangerous weapons or means.	Ditto ...	Ditto ...	Not bailable.	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
327	Voluntarily causing hurt to extort property or a valuable security, or to constrain to do anything which is illegal or which may facilitate the commission of an offence.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Hurt—continued.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
328	Administering stupefying drug with intent to cause hurt, &c.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.
329	Voluntarily causing grievous hurt to extort property or a valuable security, or to constrain to do anything which is illegal, or which may facilitate the commission of an offence.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
330	Voluntarily causing hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

331	Voluntarily causing grievous hurt to extort confession or information, or to compel restoration of property, &c.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
332	Voluntarily causing hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for three years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
333	Voluntarily causing grievous hurt to deter public servant from his duty.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
334	Voluntarily causing hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
335	Causing grievous hurt on grave and sudden provocation, not intending to hurt any other than the person who gave the provocation.	May arrest without warrant	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 4 years, or fine of 2,000 rupees, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Hurt—concluded.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
336	Doing any act which endangers human life or the personal safety of others.	May arrrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description for 3 months, or fine of 250 rupees, or both.	Any Magistrate.
337	Causing hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Compoundable when permission is given by the Court before which a prosecution is pending.	Imprisonment of either description for 6 months, or fine of 500 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
338	Causing grievous hurt by an act which endangers human life, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine of 1,000 rupees, or both.	Ditto.

Of Wrongful Restraint and Wrongful Confinement.

341	Wrongfully restraining any person.	May arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Simple imprisonment for 1 month, or fine of 500 rupees, or both.	Any Magistrate.
342	Wrongfully confining any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
343	Wrongfully confining for three or more days.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, and fine.	Ditto.
344	Wrongfully confining for ten or more days.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
345	Keeping any person in wrongful confinement, knowing that a writ has been issued for his liberation.	Shall not arrest without warrant.	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 2 years, in addition to imprisonment under any other section.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Criminal Force and Assault.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
346	Wrongful confinement in secret.	May arrest without warrant.	Summons ...	Bailable ...	Not compoundable.	Imprisonment of either description of 2 years in addition to imprisonment under any other section.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
347	Wrongful confinement for the purpose of extorting property, or constraining to an illegal act, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
348	Wrongful confinement for the purpose of extorting confession or information, or of compelling restoration of property, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.

352	Assault or use of criminal force otherwise than on grave provocation.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
353	Assault or use of criminal force to deter a public servant from discharge of his duty.	May arrest without warrant.	Warrant ...	Ditto ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
354	Assault or use of criminal force to a woman with intent to outrage her modesty.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
355	Assault or criminal force with intent to dishonour a person, otherwise than on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Ditto	Ditto.
356	Assault or criminal force in attempt to commit theft of property worn or carried by a person.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Ditto	Any Magistrate.
357	Assault or use of criminal force in attempt wrongfully to confine a person.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
358	Assault or use of criminal force on grave and sudden provocation.	Shall not arrest without warrant.	Summons ...	Ditto ...	Compoundable.	Simple imprisonment for 1 month, or fine of 200 rupees, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*continued.*

Of Kidnapping, Abduction, Slavery and Forced Labour.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
363	Kidnapping	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
364	Kidnapping or abducting in order to murder.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.
365	Kidnapping or abducting with intent secretly and wrongfully to confine a person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
366	Kidnapping or abducting a woman to compel her marriage or to cause her defilement, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

367	Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
368	Concealing or keeping in confinement a kidnapped person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for kidnapping or abduction.	Ditto.
369	Kidnapping or abducting a child with intent to take property from the person of such child.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
370	Buying or disposing of any person as a slave.	Shall not arrest without warrant.	Ditto ...	Bailable ..	Ditto ...	Ditto	Ditto.
371	Habitual dealing in slaves	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
372	Selling or letting to hire a minor for purposes of prostitution, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XVI.—OFFENCES AFFECTING THE HUMAN BODY—*concluded.*

Of Kidnapping, Abduction, Slavery and Forced Labour—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
373	Buying or obtaining possession of a minor for the same purposes.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
374	Unlawful compulsory labour.	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Any Magistrate.
	Of Rape.						
376	Rape ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years and fine.	Court of Session.

Of Unnatural Offences.

377	Unnatural offences ...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.

CHAPTER XVII.—OFFENCES AGAINST PROPERTY.

Of Theft.

379	Theft	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Any Magistrate.
380	Theft in a building, tent or vessel.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years and fine.	Ditto.
381	Theft by clerk or servant of property in possession of master or employer.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
382	Theft, preparation having been made for causing death, or hurt, or restraint, or fear of death, or of hurt or of restraint, in order to the committing of such theft or to retiring after committing it, or to retaining property taken by it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Extortion.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
384	Extortion	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either descripton for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
385	Putting or attempting to put in fear of injury, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.
386	Extortion by putting a person in fear of death or grievous hurt.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Court of Session.
387	Putting or attempting to put a person in fear of death or grievous hurt, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.

388	Extortion by threat of accusation of an offence punishable with death, transportation for life, or imprisonment for 10 years.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence threatened be an unnatural offence.	Ditto ...	Dittto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.
389	Putting a person in fear of accusation of offence punishable with death, transportation for life, or with imprisonment for 10 years, in order to commit extortion.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
	If the offence be an unnatural offence.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life ...	Ditto.

Of Robbery and Dacoity.

392	Robbery	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Rigorous imprisonment for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
	If committed on the highway between sunset and sunrise.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 14 years and fine.	Ditto.
393	Attempt to commit robbery.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Robbery and Dacoity—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
394	Person voluntarily causing hurt in committing or attempting to commit robbery, or any other person jointly concerned in such robbery.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
395	Dacoity	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session.
396	Murder in dacoity ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Death, transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
397	Robbery or dacoity, with attempt to cause death or grievous hurt.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for not less than 7 years.	Ditto.

398	Attempt to commit robbery or dacoity when armed with deadly weapon.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
399	Making preparation to commit dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 10 years and fine.	Ditto.
400	Belonging to a gang of persons associated for the purpose of habitually committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Ditto.
401	Belonging to a wandering gang of persons associated for the purpose of habitually committing thefts.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Rigorous imprisonment for 7 years and fine.	Ditto.
402	Being one of five or more persons assembled for the purpose of committing dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

Of Criminal Misappropriation of Property.

403	Dishonest misappropriation of moveable property, or converting it to one's own use.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.
404	Dishonest misappropriation of property, knowing that it was in possession of a deceased person at his death, and that it has not since been in the possession of any person legally entitled to it.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Criminal Misappropriation of Property.—concluded.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
	If by clerk or person employed by deceased.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
	Of Criminal Breach of Trust.						
406	Criminal breach of trust...	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

407	Criminal breach of trust by a carrier, wharfinger, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
408	Criminal breach of trust by a clerk or servant.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
409	Criminal breach of trust by public servant or by banker, merchant or agent, &c.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of the Receiving of Stolen Property.

411	Dishonestly receiving stolen property, knowing it to be stolen.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
412	Dishonestly receiving stolen property, knowing that it was obtained by dacoity.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or rigorous imprisonment for 10 years and fine.	Court of Session.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of the Receiving of Stolen property—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
413	Habitually dealing in stolen property.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
414	Assisting in concealment or disposal of stolen property, knowing it to be stolen.	Ditto	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

Of Cheating.

417	Cheating	Shall not arrest without warrant.	Warrant ..	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the

							first or second class.
418	Cheating a person whose interest the offender was bound, either by law, or by legal contract, to protect.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
419	Cheating by personation...	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Ditto.
420	Cheating and thereby dishonestly inducing delivery of property, or the making, alteration or destruction of a valuable security.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.

Of Fraudulent Deeds and Dispositions of Property.

421	Fraudulent removal or concealment of property, &c, to prevent distribution among creditors.	Shall not arrest without warrant.	Warrant ...	Bailable ..	Not compoundable	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
422	Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	Ditto ..	Ditto ...	Ditto ...	Ditto	Ditto ...	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Fraudulent Deeds and Dispositions of Property—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
423	Fraudulent execution of deed of transfer containing a false statement of consideration.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
424	Fraudulent removal or concealment of property of himself or any other person, or assisting in the doing thereof, or dishonestly releasing any demand or claim to which he is entitled.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Ditto	Ditto.

Of Mischief.

426	Mischief	Shall not arrest without	Summons ...	Bailable ...	Compoundable when	Imprisonment of either description for 3 months.	Any Magistrate.

		warrant.			the only loss or damage caused is loss or damage to a private person.	or fine, or both.	
427	Mischief, and thereby causing damage to the amount of 50 rupees or upwards.	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
428	Mischief by killing, poisoning, maiming or rendering useless any animal of the value of 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto ...	Not compoundable.	Ditto	Ditto.
429	Mischief by killing, poisoning, maiming or rendering useless any elephant, camel, horse, &c., whatever may be its value, or any other animal of the value of 50 rupees or upwards.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
430	Mischief by causing diminution of supply of water for agricultural purposes, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Mischief—continued.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not.	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable.
431	Mischief by injury to public road, bridge, navigable river or navigable channel, and rendering it impassable or less safe for travelling or conveying property.	May arrest without warrant.	Warrant ..	Bailable ...	Not compoundable.	Imprisonment of either description for five years, or fine, or both.]	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
432	Mischief by causing inundation or obstruction to public drainage, attended with damage.	Ditto ...	Ditto ...	Ditto ...	Ditto ..	Ditto	Ditto.
433	Mischief by destroying or moving or rendering less useful a light-house or seamark, or by exhibiting false lights.	Ditto ...	Ditto ...	Ditto .	Ditto	Imprisonment of either description for 7 years, or fine, or both.	Court of Session.

434	Mischief by destroying or moving, &c., a landmark fixed by public authority.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
435	Mischief by fire or explosive substance with intent to cause damage to amount of 100 rupees or upwards or, in case of agricultural produce, 10 rupees or upwards.	May arrest without warrant.	Ditto ...	Ditto	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
436	Mischief by fire or explosive substance with intent to destroy a house, &c.	Ditto ...	Ditto ...	Not bailable.	Ditto ..	Transportation for life, or imprisonment of either description for 10 years and fine.	Ditto.
437	Mischief with intent to destroy or make unsafe a decked vessel or a vessel of 20 tons burden.	Ditto ...	Ditto ..	Ditto	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
438	The mischief described in the last section when committed by fire or any explosive substance.	Ditto ...	Ditto ...	Ditto .	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
439	Running vessel ashore with intent to commit theft, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.

SCHEDULE II—*Continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Mischief—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
440	Mischief committed after preparation made for causing death or hurt, &c.	May arrest without warrant.	Warrant. ...	Not bailable.	Not compoundable.	Imprisonment of either description for 5 years and fine.	Court of Session.

Of Criminal Trespass.

447	Criminal trespass ...	May arrest without warrant. ...	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 3 months, or fine of 500 rupees, or both.	Any Magistrate.
448	House-trespass ...	Ditto ...	Warrant ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine of 1,000 rupees, or both.	Ditto.
449	House-trespass in order to the commission of an offence punishable with death.	Ditto ...	Ditto ...	Not bailable.	Not compoundable.	Transportation for life, or rigorous imprisonment for 10 years, and fine.	Court of Session.

450	House-trespass in order to the commission of an offence punishable with transportation for life.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
451	House-trespass in order to the commission of an offence punishable with imprisonment. ...	Ditto ...	Ditto ...	Bailable ..	Ditto ...	Imprisonment of either description for 2 years and fine.	Any Magistrate.
	If the offence is theft ...	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
452	House-trespass, having made preparation for causing hurt, assault, &c.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
453	Lurking house-trespass or house-breaking. ...	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years and fine.	Presidency Magistrate or Magistrate of the first or second class.
454	Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.	Ditto ..	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVII.—OFFENCES AGAINST PROPERTY—*continued.*

Of Criminal Trespass—continued

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
	If the offence is theft ...	May arrest without warrant.	Warrant. ...	Not bailable.	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.
455	Lurking house trespass or house-breaking after preparation made for causing hurt, assault, &c. ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
456	Lurking house-trespass or house-breaking by night.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or

							Magistrate of the first or second class.
457	Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 5 years and fine.	Ditto.
	If the offence is theft ...	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 14 years and fine.	Ditto.
458	Lurking house-trespass or house-breaking by night, after preparation made for causing hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Court of Session, Presidency Magistrate or Magistrate of the first class.
459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Court of Session.
460	Death or grievous hurt caused by one of several persons jointly concerned in house-breaking by night, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
461	Dishonestly breaking open or unfastening any closed receptacle containing or supposed to contain property.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

SCHEDULE II—*continued.*

CHAPTER XVII—OFFENCES AGAINST PROPERTY—*concluded.*

Of Criminal Trespass—concluded.

1 Section.	2 Offence.	3 Whether the police may arrest without warrant or not.	4 Whether a warrant or a summons shall ordinarily issue in the first instance.	5 Whether bailable or not	6 Whether compoundable or not.	7 Punishment under the Indian Penal Code.	8 By what Court triable
462	Being entrusted with any closed receptacle containing or supposed to contain any property, and fraudulently opening the same.	May arrest without warrant.	Warrant ...	Not Bailable	Not compoundable	Imprisonment of either description for 3 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS.

465	Forgery ...	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Court of Session.
466	Forgery of a record of a Court of Justice or of a Register of births, &c, kept by a public servant	Ditto ..	Ditto ..	Not bailable	Ditto ..	Imprisonment of either description for 7 years and fine.	Ditto.

467	Forgery of a valuable security, will, or authority to make or transfer any valuable security, or to receive any money, &c.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Transportation for life, or imprisonment of either description for 10 years, and fine.	Ditto.
	When the valuable security is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Ditto ...	Ditto ..	Ditto	Ditto.
468	Forgery for the purpose of cheating.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
469	Forgery for the purpose of harming the reputation of any person, or knowing that it is likely to be used for that purpose.	Ditto ...	Ditto ...	Bailable ..	Ditto ...	Imprisonment of either description for 3 years and fine.	Ditto.
471	Using as genuine a forged document which is known to be forged.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Punishment for forgery.	Ditto.
	When the forged document is a promissory note of the Government of India.	May arrest without warrant.	Ditto ...	Not bailable	Ditto ...	Ditto	Ditto.
472	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—*continued.*

1	2	3	4	5	6	7	8
Section.	Offence	Whether the police may arrest without warrant or not.	Whether a warrant or summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
473	Making or counterfeiting a seal, plate, &c., with intent to commit a forgery punishable otherwise than under section 467 of the Indian Penal Code, or possessing with like intent any such seal, plate, &c., knowing the same to be counterfeit.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 7 years and fine.	Court of Session.
474	Having possession of a document, knowing it to be forged, with intent to use it as genuine; if the document is one of the description mentioned in section 466 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
	If the document is one of the description mentioned in section 467 of the Indian Penal Code.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

475	Counterfeiting a device or mark used for authenticating documents described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
476	Counterfeiting a device or mark used for authenticating documents other than those described in section 467 of the Indian Penal Code, or possessing counterfeit marked material.	Ditto ...	Ditto ..	Ditto ...	Ditto ...	Imprisonment of either description for 7 years, and fine.	Ditto.
477	Fraudulently destroying or defacing, or attempting to destroy or deface, or secreting, a will, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Transportation for life, or imprisonment of either description for 7 years, and fine.	Ditto.

Of Trade and Property-marks.

482	Using a false trade or property-mark with intent to deceive or injure any person.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Not compoundable.	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
483	Counterfeiting a trade or property-mark used by another, with intent to cause damage or injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Ditto.

SCHEDULE II—*continued.*

CHAPTER XVIII.—OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY-MARKS—*concluded.*

Of Trade and Property-marks—concluded.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
484	Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.	Shall not arrest without warrant.	Summons ...	Bailable ..	Not compoundable.	Imprisonment of either description for 3 years and fine.	Court of Session, Presidency Magistrate or Magistrate of the first class.
485	Fraudulently making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade-mark.	Ditto ...	Ditto .	Ditto ...	Ditto ..	Imprisonment of either description for 3 years, or fine, or both.	Ditto.
486	Knowingly selling goods marked with a counterfeit property or trade-mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
487	Fraudulently making a	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either	Court of Ses-

	false mark upon any package or receptacle containing goods, with intent to cause it to be believed that it contains goods which it does not contain, &c.					description for 3 years, or fine, or both.	sion, Presidency Magistrate or Magistrate of the first or second class.
488	Making use of any such false mark.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.
489	Removing, destroying or defacing any property-mark with intent to cause injury.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE.

490	Being bound by contract to render personal service during a voyage or journey, or to convey or guard any property or person, and voluntarily omitting to do so.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of 100 rupees, or both.	Presidency Magistrate or Magistrate of the first or second class.
491	Being bound to attend on or supply the wants of a person who is helpless from youth, unsoundness of mind or disease, and voluntarily omitting to do so.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 3 months, or fine of 200 rupees, or both.	Ditto.

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SCHEDULE II—*continued.*

CHAPTER XIX—CRIMINAL BREACH OF CONTRACTS OF SERVICE—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the Police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
492	Being bound by a contract to render personal service for a certain period at a distant place to which the employé is conveyed at the expense of the employer, and voluntarily deserting the service or refusing to perform the duty.	Shall not arrest without warrant.	Summons ...	Bailable ...	Compoundable.	Imprisonment of either description for 1 month, or fine of double the expense incurred, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XX.—OFFENCES RELATING TO MARRIAGE.

493	A man by deceit causing a woman not lawfully married to him to believe that she is lawfully married to him, and to cohabit with him in that belief.	Shall not arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	Imprisonment of either description for 10 years and fine.	Court of Session.

494	Marrying again during the lifetime of a husband or wife.	Ditto ...	Ditto ...	Bailable ...	Ditto ...	Imprisonment of either description for 7 years and fine.	Court of Session.
495	Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.	Ditto ...	Ditto ...	Not bailable	Ditto ...	Imprisonment of either description for 10 years and fine.	Ditto.
496	A person with fraudulent intention going through the ceremony of being married, knowing that he is not thereby lawfully married.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	Imprisonment of either description for 7 years and fine.	Ditto.
497	Adultery	Ditto ...	Ditto ...	Bailable ..	Compoundable.	Imprisonment of either description for 5 years, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
498	Enticing or taking away or detaining with a criminal intent a married woman.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.

CHAPTER XXI.—DEFAMATION.

500	Defamation	Shall not arrest without warrant.	Warrant ...	Bailable ..	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.

SCHEDULE II—*continued.*

CHAPTER XXI.—DEFAMATION—*concluded.*

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
501	Printing or engraving matter knowing it to be defamatory.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Simple imprisonment for 2 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
502	Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	Ditto ..	Ditto ...	Ditto ...	Ditto ...	Ditto	Ditto.

CHAPTER XXII.—CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE.

504	Insult intended to provoke a breach of the peace.	Shall not arrest without warrant.	Warrant ...	Bailable ...	Compoundable.	Imprisonment of either description for 2 years, or fine, or both.	Any Magistrate.

505	False statement, rumour, &c., circulated with intent to cause mutiny or offence against the public peace.	Ditto ...	Ditto ...	Not bailable	Not compoundable.	Ditto	Presidency Magistrate or Magistrate of the first or second class.
506	Criminal intimidation ...	Ditto ...	Ditto ...	Bailable ...	Compoundable.	Ditto	Ditto.
	If threat be to cause death or grievous hurt, &c.	Ditto ...	Ditto ...	Ditto ...	Not compoundable.	Imprisonment of either description for 7 years, or fine, or both.	Court of Session, Presidency Magistrate or Magistrate of the first class.
507	Criminal intimidation by anonymous communication or having taken precaution to conceal whence the threat comes.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 2 years in addition to the punishment under above section.	Ditto.
508	Act caused by inducing a person to believe that he will be rendered an object of Divine displeasure.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Imprisonment of either description for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first or second class.
509	Uttering any word or making any gesture intended to insult the modesty of a woman, &c.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 1 year, or fine, or both.	Presidency Magistrate or Magistrate of the first class.
510	Appearing in a public place, &c., in a state of intoxication, and causing annoyance to any person.	Ditto ...	Ditto ...	Ditto ...	Ditto ...	Simple imprisonment for 24 hours, or fine of 10 rupees, or both.	Any Magistrate.

SCHEDULE II—*concluded.*

CHAPTER XXIII.—ATTEMPTS TO COMMIT OFFENCES.

1	2	3	4	5	6	7	8
Section.	Offence.	Whether the police may arrest without warrant or not.	Whether a warrant or a summons shall ordinarily issue in the first instance.	Whether bailable or not.	Whether compoundable or not.	Punishment under the Indian Penal Code.	By what Court triable.
511	Attempting to commit offences punishable with transportation or imprisonment, and in such attempt doing any act towards the commission of the offence.	According as the offence is one in respect of which the police may arrest without warrant or not.	According as the offence is one in respect of which a summons or warrant shall ordinarily issue.	According as the offence contemplated by the offender is bailable or not.	Compoundable when the offence attempted is compoundable.	Transportation or imprisonment not exceeding half of the longest term, and of any description, provided for the offence, or fine, or both.	The Court by which the offence attempted is triable.

OFFENCES AGAINST OTHER LAWS.

	If punishable with death, transportation or imprisonment for seven years or upwards.	May arrest without warrant.	Warrant ...	Not bailable	Not compoundable.	.....	According to
	If punishable with imprisonment for three years and upwards but less than seven.	Ditto ...	Ditto ...	Ditto ... Except in cases under the Indian Arms Act, 1878, sec-	Ditto ...	.....	

			tion 19, which shall be bailable.			the provisions of section 29 of this Code.
If punishable with imprisonment for less than three years.	Shall not arrest without warrant.	Summons ...	Bailable ...	Ditto ...	.....	
If punishable with fine only.	Ditto ...	Ditto ...	Ditto ..	Ditto ...	.....	

SCHEDULE III.

ORDINARY POWERS OF PROVINCIAL MAGISTRATES.

I.—Ordinary Powers of a Magistrate of the Third Class.

(1) Power to arrest, or direct the arrest in his presence of, an offender; section 65.
(2) Power to endorse a warrant, or to order the removal of an accused person arreste under a warrant; sections 83, 84 and 86.
(3) Power to issue proclamations in cases judicially before him, section 87.
(4) Power to attach and sell property in cases judicially before him, section 88.
(5) Power to restore attached property, section 89.
(6) Power to issue search-warrant, section 96.
(7) Power to endorse a search-warrant and order delivery of thing found, section 99.
(8) Power to record statements or confessions during a police investigation, section 164
(9) Power to authorize detention of a person during a police-investigation, section 167.
(10) Power to detain an offender found in Court, section 351.
(11) Power to sell perishable property of a suspected character, section 525.

II.—Ordinary Powers of a Magistrate of the Second Class.

(1) The ordinary powers of a Magistrate of the third class.
(2) Power to order the police to investigate an offence in cases in which the Magistrate has jurisdiction to try or commit for trial, section 155.

III.—Ordinary Powers of a Magistrate of the First Class.

(1) The ordinary powers of a Magistrate of the second class.
(2) Power to issue search-warrant otherwise than in course of an inquiry, section 98.
(3) Power to issue search-warrant for discovery of persons wrongfully confined, section 100.
(4) Power to require security to keep the peace, section 107
(5) Power to require security for good behaviour, section 109.
(6) Power to make orders, &c., in possession cases; sections 145, 146 and 147.
(7) Power to commit for trial, section 206.
(8) Power to stop proceedings when no complainant, section 249.
(9) Power to make orders of maintenance, sections 488 and 489.

IV.—Ordinary Powers of a Sub-divisional Magistrate.

(1) The ordinary powers of a Magistrate of the first class.
(2) Power to direct warrants to landholders, section 78.
(3) Power to make orders as to local nuisances, section 133.
(4) Power to make orders prohibiting repetitions of nuisances, section 143.
(5) Power to make orders under section 144.
(6) Power to hold inquests, section 174.
(7) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186.
(8) Power to entertain complaints, section 191.
(9) Power to receive police-reports, section 191.
(10) Power to entertain cases without complaint, section 191.
(11) Power to transfer cases to a Subordinate Magistrate, section 192.
(12) Power to pass sentence on proceedings recorded by a Subordinate Magistrate, section 349.
(13) Power to sell property alleged or suspected to have been stolen, &c.; section 524.
(14) Power to withdraw cases other than appeals, and to try or refer them for trial; section 528.

V.—Ordinary Powers of a District Magistrate.

(1) The ordinary powers of a Sub-divisional Magistrate, being a Magistrate of the first class.
(2) Power to issue search-warrants for documents in custody of Postal or Telegraph authorities, section 96.

(3) Power

SCHEDULE III—*concluded.*

(3) Power to discharge persons bound to keep the peace or to be of good behaviour, section 124.
(4) Power to cancel bond for keeping the peace, section 125.
(5) Power to try summarily, section 260.
(6) Power to quash convictions in certain cases, section 350.
(7) Power to hear appeals from orders requiring security for good behaviour, section 406.
(8) Power to hear or refer appeals from convictions by Magistrates of the second and third classes, section 407.
(9) Power to call for records, section 435.
(10) Power to revise orders passed under section 514; section 515.

SCHEDULE IV

ADDITIONAL POWERS WITH WHICH PROVINCIAL MAGISTRATES MAY BE INVESTED.

POWERS WITH WHICH A MAGISTRATE OF THE FIRST CLASS MAY BE INVESTED	BY THE LOCAL GOVERNMENT	(1) Power to require security for good behaviour, section 110: (2) Power to make orders as to local nuisances, section 133: (3) Power to make orders prohibiting repetitions of nuisances, section 143: (4) Power to make orders under section 144: (5) Power to hold inquests, section 174: (6) Power to issue process for person within local jurisdiction who has committed an offence outside the local jurisdiction, section 186: (7) Power to take cognizance of offences upon complaint, section 191: (8) Power to take cognizance of offences upon police reports, section 191: (9) Power to take cognizance of offences upon information, section 191: (10) Power to try summarily, section 260: (11) Power to hear appeals from convictions by Magistrates of the second and third classes, section 407: (12) Power to sell property alleged or suspected to have been stolen, &c.; section 524.
	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144:

(3) Power

SCHEDULE IV.—*continued.*

	By the District Magistrate	(3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to transfer cases, section 192.
POWERS WITH WHICH A MAGISTRATE OF THE SECOND CLASS MAY BE INVESTED	By the Local Government	(1) Power to pass sentences of whipping, section 32: (2) Power to make orders prohibiting repetitions of nuisances, section 143: (3) Power to make orders under section 144: (4) Power to hold inquests, section 174: (5) Power to take cognizance of offences upon complaint, section 191: (6) Power to take cognizance of offences upon police reports, section 191: (7) Power to take cognizance of offences upon information, section 191: (8) Power to commit for trial, section 206
	By the District Magistrate	(1) Power to make orders prohibiting repetitions of nuisances, section 142: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191.
POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED.	By the Local Government	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191: (6) Power to commit for trial, section 206.

SCHEDULE IV.

SCHEDULE IV—*concluded.*

POWERS WITH WHICH A MAGISTRATE OF THE THIRD CLASS MAY BE INVESTED	BY THE DISTRICT MAGISTRATE	(1) Power to make orders prohibiting repetitions of nuisances, section 143: (2) Power to make orders under section 144: (3) Power to hold inquests, section 174: (4) Power to take cognizance of offences upon complaint, section 191: (5) Power to take cognizance of offences upon police reports, section 191.
POWERS WITH WHICH A SUB-DIVISIONAL MAGISTRATE MAY BE INVESTED	BY THE LOCAL GOVERNMENT	Power to call for records, section 435.

SCHEDULE V.

FORMS.

I.—SUMMONS TO AN ACCUSED PERSON.

(*See section 68.*)

To of

WHEREAS your attendance is necessary to answer to a charge of (*state shortly the offence charged*), you are hereby required to appear in person (*or* by pleader, *as the case may be*) before the (*Magistrate*) of , on the day of . Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

II.—WARRANT OF ARREST.

(*See section 75.*)

To (*name and designation of the person or persons who is or are to execute the warrant*).

WHEREAS of stands charged with the offence of (*state the offence*), you are hereby directed to arrest the said , and to produce him before me. Herein fail not.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

(*See section 76.*)

This warrant may be endorsed as follows :—

If the said shall give bail himself in the sum of , with one surety in the sum of (*or* two sureties each in the sum of), to attend before me on the day of and to continue so to attend until otherwise directed by me, he may be released.

Dated this day of , 18 .

(*Signature.*)

SCHEDULE V—*continued.*

FORMS.

III.—BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT.

(*See section 86.*)

I, (*name*), of , being brought before the District Magistrate of (*or as the case may be*) under a warrant issued to compel my appearance to answer to the charge of , do hereby bind myself to attend in the Court of on the day of next to answer to the said charge, and to continue so to attend until otherwise directed by the Court; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

I do hereby declare myself surety for the abovenamed of , that he shall attend before in the Court of on the day of next to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the Court; and, in case of his making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature.*)

IV.—PROCLAMATION REQUIRING THE APPEARANCE OF A PERSON ACCUSED.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of , punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said of is required to appear at (*place*) before this Court (*or* before me) to answer the said complaint within days from this date.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

V.—PROCLAMATION REQUIRING THE ATTENDANCE OF A WITNESS.

(*See section 87.*)

WHEREAS complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of (*mention the offence concisely*) and a warrant has been issued to compel the attendance of (*name, description and address of the witness*) before this Court to be examined touching the matter of the said complaint; and whereas it has been returned to the said warrant that the said (*name of witness*) cannot be served, and it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant);

Proclamation is hereby made that the said (*name*) is required to appear at (*place*) before the Court of on the day of next at o'clock, to be examined touching , the offence complained of.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

VI.

SCHEDULE V—*continued.*

VI.—Order of Attachment to compel the Attendance of a Witness.

(*See section 88.*)

To the Police-officer in charge of the Police station at

Whereas a warrant has been duly issued to compel the attendance of (*name, description and address*) to testify concerning a complaint pending before this Court, and it has been returned to the said warrant that it cannot be served; and whereas it has been shown to my satisfaction that he has absconded (*or* is concealing himself to avoid the service of the said warrant); and thereupon a Proclamation was duly issued and published requiring the said to appear and give evidence at the time and place mentioned therein, and he has failed to appear;

This is to authorize and require you to attach by seizure the moveable property belonging to the said to the value of rupees which you may find within the District of and to hold the said property under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

Order of Attachment to compel the Appearance of a Person Accused.

(*See section 88.*)

To (*name and designation of the person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days; and whereas the said is possessed of the following property other than land paying revenue to Government in the village (*or* town) of , in the District of , *viz.*, , and an order has been made for the attachment thereof;

You are hereby required to attach the said property by seizure, and to hold the same under attachment pending the further order of this Court, and to return this warrant with an endorsement certifying the manner of its execution.

Dated this day of , 18 .

(*Seal.*)

(*Signature.*)

Order authorizing an Attachment by the Deputy Commissioner as Collector.

(*See section 88.*)

To the Deputy Commissioner of the District of

Whereas complaint has been made before me that (*name, description and address*) has committed (*or* is suspected to have committed) the offence of punishable under section of the Indian Penal Code, and it has been returned to a warrant of arrest thereupon issued that the said (*name*) cannot be found; and whereas it has been shown to my satisfaction that the said (*name*) has absconded (*or* is concealing himself to avoid the service of the said warrant), and thereupon a Proclamation was duly issued and published requiring the said to appear to answer the said charge within days, but he has not appeared; and whereas the said is possessed of certain land paying revenue to Government in the village (*or* town), of in the District of ;

You

SCHEDULE V—*continued.*

You are hereby authorized and requested to cause the said land to be attached, and to be held under attachment pending the further order of this Court, and to certify without delay what you may have done in pursuance of this order.

Dated this day of , 18 .

(*Seal.*)

(*Signature.*)

VII.—Warrant in the first Instance to bring up a Witness.

(*See section 90.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*mention the offence concisely*), and it appears likely that (*name and description of witness*) can give evidence concerning the said complaint; and whereas I have good and sufficient reason to believe that he will not attend as a witness on the hearing of the said complaint unless compelled to do so;

This is to authorize and require you to arrest the said (*name*) and on the day of to bring him before this Court, to be examined touching the offence complained of.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*)

(*Signature.*)

VIII.—Warrant to search after Information of a particular Offence.

(*See section 96.*)

To (*name and designation of the Police-officer or other person or persons who is or are to execute the warrant*).

Whereas information has been laid (*or* complaint has been made) before me of the commission (*or* suspected commission) of the offence of (*mention the offence concisely*), and it has been made to appear to me that the production of (*specify the thing clearly*) is essential to the inquiry now being made (*or* about to be made) into the said offence (*or* suspected offence);

This is to authorize and require you to search for the said (*the thing specified*) in the (*describe the house or place, or part thereof, to which the search is to be confined*), and, if found, to produce the same forthwith before this Court; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*)

(*Signature.*)

IX.—Warrant to search suspected Place of Deposit.

(*See section 98.*)

To (*name and designation of a Police-officer above the rank of a Constable*).

Whereas information has been laid before me, and on due inquiry thereupon had I have been led to believe that the (*describe the house or other place*) is used as a place for the deposit (*or* sale) of stolen property (*or, if for either of the other purposes expressed in the section, state the purpose in the words of the section*);

This

SCHEDULE V—*continued.*

This is to authorize and require you to enter the said house (*or other place*) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (*or other place, or if the search is to be confined to a part, specify the part clearly*) and to seize and take possession of any property (*or* documents, *or* stamps, *or* seals, *or* coins, *as the case may be*)—[Add (*when the case requires it*) and also of any instruments and materials which you may reasonably believe to be kept for the manufacture of forged documents, *or* counterfeit stamps, *or* false seals, *or* counterfeit coin, (*as the case may be*)] and forthwith to bring before this Court such of the said things as may be taken possession of; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

X.—Bond to keep the Peace.

(*See section 106.*)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to keep the peace for the term of • , I hereby bind myself not to commit a breach of the peace, or do any act that may probably occasion a breach of the peace, during the said term; and, in case of my making default therein, I hereby bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XI.—Bond for Good Behaviour.

(*See sections 109 and 110.*)

Whereas I, (*name*), inhabitant of (*place*), have been called upon to enter into a bond to be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects for the term of (*state the period*), I hereby bind myself to be of good behaviour to Her Majesty and to all her subjects during the said term; and, in case of my making default therein, I bind myself to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

(*Where a bond with sureties is to be executed, add*)—We do hereby declare ourselves sureties for the abovenamed that he will be of good behaviour to Her Majesty the Queen, Empress of India, and to all her subjects during the said term; and, in case of his making default therein, we bind ourselves, jointly and severally, to forfeit to Her Majesty the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XII.—Summons on Information of a probable Breach of the Peace.

(*See section 114.*)

To of .

Whereas it has been made to appear to me by credible information that (*state the substance of the information*), and that you are likely to commit a breach of the peace (*or* by which act a breach of the peace will probably be occasioned), you are hereby required to attend in person (*or* by a duly authorized agent) at the Office of the Magistrate of on

SCHEDULE V—*continued.*

on the day of , 18 , at ten o'clock in the forenoon, to show cause why you should not be required to enter into a bond for rupees [*when sureties are required, add*, and also to give security by the bond of one (*or* two, *as the case may be*) surety (*or* sureties) in the sum of rupees (*each, if more than one*)], that you will keep the peace for the term of .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIII.—Warrant of Commitment on Failure to find Security to keep the Peace.

(*See section 123.*

To the Superintendent (*or* Keeper) of the Jail at .

Whereas (*name and address*) appeared before me in person (*or* by his authorized agent) on the day of in obedience to a summons calling upon him to show cause why he should not enter into a bond for rupees with one surety (*or* a bond with two sureties each in rupees), that he the said (*name*) would keep the peace for the period of months; and whereas an order was then made requiring the said (*name*) to enter into and find such security (*state the security ordered when it differs from that mentioned in the summons*), and he has failed to comply with the said order;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*) unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received, and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XIV.—Warrant of Commitment on Failure to find Security for Good Behaviour

(*See section 123.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas it has been made to appear to me that (*name and description*) has been and is lurking within the district of having no ostensible means of subsistence (*or*, and that he is unable to give any satisfactory account of himself);

or

Whereas evidence of the general character of (*name and description*) has been adduced before me and recorded from which it appears that he is an habitual robber (*or* house-breaker, &c., *as the case may be*);

And whereas an order has been recorded stating the same and requiring the said (*name*) to furnish security for his good behaviour for the term of (*state the period*) by entering into a bond with one surety (*or* two or more sureties, *as the case may be*), himself for rupees , and the said surety (*or* each of the said sureties) for rupees , and the said (*name*) has failed to comply with the said order, and for such default has been adjudged imprisonment for (*state the term*) unless the said security be sooner furnished;

This is to authorize and require you the said Superintendent (*or* Keeper) to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless he shall in the meantime comply with the said order by himself and his surety (*or* sureties) entering into the said bond, in which case the same shall be received and the said (*name*) released; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XV.

SCHEDULE V—*continued.*

XV.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See sections 123 and 124.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since duly given security under section of the Code of Criminal Procedure,

or

and there have appeared to me sufficient grounds for the opinion that he can be released without hazard to the community;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other cause.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVI.—Order for the Removal of Nuisances.

(*See section 133.*)

To (*name, description and address*).

Whereas it has been made to appear to me that you have caused an obstruction (*or* nuisance) to persons using the public roadway (*or other public place*), which, &c. (*describe the road or public place*), by, &c. (*state what it is that causes the obstruction or nuisance*), and that such obstruction (*or* nuisance) still exists;

or

Whereas it has been made to appear to me that you are carrying on as owner, or manager, the trade or occupation of (*state the particular trade or occupation and the place where it is carried on*), and that the same is injurious to the public health (*or* comfort) by reason (*state briefly in what manner the injurious effects are caused*), and should be suppressed or removed to a different place;

or

Whereas it has been made to appear to me that you are the owner (*or* are in possession of *or* have the control over) a certain tank (*or* well *or* excavation) adjacent to the public way (*describe the thoroughfare*), and that the safety of the public is endangered by reason of the said tank (*or* well *or* excavation) being without a fence (*or* insecurely fenced);

or

Whereas, &c., &c. (*as the case may be*);

I do hereby direct and require you within (*state the time allowed*) to (*state what is required to be done to abate the nuisance*) or to appear at in the Court of on the day next, and to show cause why this order should not be enforced;

or

I do hereby direct and require you within (*state the time allowed*) to cease carrying on the said trade or occupation at the said place, and not again to carry on the same, or to remove the said trade from the place where it is now carried on, or to appear, &c.;

or

I do hereby direct and require you within (*state the time allowed*) to put up a sufficient fence (*state the kind of fence and the part to be fenced*), or to appear, &c.

or

I do hereby direct and require you, &c., &c. (*as the case may be*).

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.*

XVII.—Magistrate's Order constituting a Jury.

(*See section 138.*)

Whereas on the day of , 18 , an order was issued to (*name*) requiring him (*state the effect of the order*), and whereas the said (*name*) has applied to me by a petition bearing date the day of for an order appointing a Jury to try whether the said recited order is reasonable and proper; I do hereby appoint (*the names, &c., of the five or more Jurors*) to the Jury to try and decide the said questions, and do require the said Jury to report their decision within days from the date of this order at my office at .

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XVIII.—Magistrate's Notice and Peremptory Order after the Finding by a Jury.

(*See section 140.*)

To (*name, description and address*).

I hereby give you notice that the Jury duly appointed on the petition presented by you on the day of have found that the order issued on the day of requiring you (*state substantially the requisition in the order*) is reasonable and proper. Such order has been made absolute, and I hereby direct and require you to obey the said order within (*state the time allowed*) on peril of the penalty provided by the Indian Penal Code for disobedience thereto.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XIX.—Injunction to provide against Imminent Danger pending Inquiry by Jury.

(*See section 142.*)

To (*name, description and address*).

Whereas the inquiry by a Jury appointed to try whether my order issued on the day of , 18 , is reasonable and proper is still pending, and it has been made to appear to me that the nuisance mentioned in the said order is attended with so imminent serious danger to the public as to render necessary immediate measures to prevent such danger, I do hereby, under the provisions of section 142 of the Code of Criminal Procedure, direct and enjoin you forthwith to (*state plainly what is required to be done as a temporary safe-guard*), pending the result of the local inquiry by the Jury.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XX.—Magistrate's Order prohibiting the Repetition, &c., of a Nuisance.

(*See section 143.*)

To (*name, description and address*).

Whereas it has been made to appear to me that, &c. (*state the proper recital, guided by* Form No. XVI or Form No. XXI, *as the case may be*);

I do

SCHEDULE V—*continued.*

I do hereby strictly order and enjoin you not to repeat the said nuisance by again placing or causing or permitting to be placed, &c. (*as the case may be*).

Given under my hand and the seal of the Court, this . day of , 18 .

(*Seal.*) (*Signature.*)

XXI.—Magistrate's Order to prevent Obstruction, Riot, &c.

(*See section 144.*)

To (*name, description and address*).

Whereas it has been made to appear to me that you are in possession (*or* have the management) of (*describe clearly the property*), and that, in digging a drain on the said land, you are about to throw or place a portion of the earth and stones dug up upon the adjoining public road, so as to occasion risk of obstruction to persons using the road;

or

Whereas it has been made to appear to me that you and a number of other persons (*mention the class of persons*) are about to meet and proceed in a religious procession along the public street, &c. (*as the case may be*), and that such procession is likely to lead to a riot or an affray;

or

Whereas, &c. &c., (*as the case may be*);

I do hereby order you not to place or permit to be placed any of the earth or stones dug from your land in any part of the said road;

or

I do hereby prohibit the procession passing along the said street, and strictly warn and enjoin you not to take any part in such procession (*or, as the case recited may require*).

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXII.—Magistrate's Order declaring Party entitled to retain Possession of Land, &c., in Dispute.

(*See section 145.*)

It appearing to me, on the grounds duly recorded, that a dispute, likely to induce a breach of the peace, existed between (*describe the parties by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the local limits of my jurisdiction, all the said parties were called upon to give in a written statement of their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and being satisfied by due inquiry had thereupon, without reference to the merits of the claim of either of the said parties to the legal right of possession, that the claim of actual possession by the said (*name or names or description*) is true,

I do decide and declare that he is (*or* they are) in possession of the said (*the subject of dispute*) and entitled to retain such possession until ousted by due course of law, and do strictly forbid any disturbance of his (*or* their) possession in the meantime.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

SCHEDULE V—*continued.*

XXIII.—Warrant of Attachment in the Case of a Dispute as to the Possession of Land, &c.

(*See section 146.*)

To the Police-officer in charge of the Police-station at [*or*, To the Collector of].

Whereas it has been made to appear to me that a dispute likely to induce a breach of the peace existed between (*describe the parties concerned by name and residence, or residence only if the dispute be between bodies of villagers*) concerning certain (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, and the said parties were thereupon duly called upon to state in writing their respective claims as to the fact of actual possession of the said (*the subject of dispute*), and whereas, upon due inquiry into the said claims, I have decided that neither of the said parties was in possession of the said (*the subject of dispute*) [*or* I am unable to satisfy myself as to which of the said parties was in possession as aforesaid];

This is to authorize and require you to attach the said (*the subject of dispute*) by taking and keeping possession thereof, and to hold the same under attachment until the decree or order of a competent Court determining the rights of the parties, or the claim to possession, shall have been obtained; and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXIV.—Magistrate's Order prohibiting the doing of any thing on Land or Water.

(*See section 147.*)

A dispute having arisen concerning the right of use of (*state concisely the subject of dispute*) situate within the limits of my jurisdiction, the possession of which land (*or* water) is claimed exclusively by (*describe the person or persons*), and it appearing to me, on due inquiry into the same, that the said land (*or* water) has been open to the enjoyment of such use by the public (*or if by an individual or a class of persons, describe him or them*), and (*if the use can be enjoyed throughout the year*) that the said use has been enjoyed within three months of the institution of the said inquiry (*or if the use is enjoyable only at particular seasons, say* "during the last of the seasons at which the same is capable of being enjoyed");

I do order that the said (*the claimant or claimants of possession*), or any one in their interest, shall not take (*or* retain) possession of the said land (*or* water) to the exclusion of the enjoyment of the right of use aforesaid, until he (*or* they) shall obtain the decree or order of a competent Court adjudging him (*or* them) to be entitled to exclusive possession.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXV.—Bond and Bail-bond on a preliminary Inquiry before a Police-officer.

(*See section 169.*)

I, (*name*), of , being charged with the offence of , and after inquiry required to appear before the Magistrate of ,

or

and after inquiry called upon to enter into my own recognizance to appear when required do hereby bind myself to appear at , in the Court of , on the

SCHEDULE V—*continued.*

the day of next (*or* on such day as I may hereafter be required to attend) to answer further to the said charge, and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

I hereby declare myself (*or* we jointly and severally declare ourselves and each of us) surety (*or* sureties) for the above-said that he shall attend at , in the Court of , on the day of next (*or* on such day as he may hereafter be required to attend), further to answer to the charge pending against him, and, in case of his making default therein, I hereby bind myself (*or* we hereby bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XXVI.—Bond to prosecute or give Evidence.

(*See section 170.*)

I, (*name*), of (*place*), do hereby bind myself to attend at , in the Court of , at o'clock on the day of next, and then and there to prosecute (*or* to prosecute and give evidence, *or* to give evidence) in the matter of a charge of against one *A. B.*, and, in case of making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XXVII.—Notice of Commitment by Magistrate to Government Pleader.

(*See section 218.*)

The Magistrate of hereby gives notice that he has committed one for trial at the next Sessions; and the Magistrate hereby instructs the Government Pleader to conduct the prosecution of the said case.

The charge against the accused is that, &c. (*state the offence as in the charge*).

Dated this day of , 18 .

(*Signature.*)

XXVIII.—Charges.

(*See sections 221, 222, 223.*)

(I.)—Charges with one Head.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

On Penal Code, section 121.

(*b*) That you, on or about the day of , at , waged war against Her Majesty the Queen, Empress of India, and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Session [*when the charge is framed by a Presidency Magistrate, for* Court of Session *substitute* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To*

SCHEDULE V—*continued.*

[*To be substituted for* (*b*):—]

On section 124.

(2) That you, on or about the day of , at , with the intention of inducing the Hon'ble *A. B.*, Member of the Council of the Governor General of India, to refrain from exercising a lawful power as such Member, assaulted such Member, and thereby committed an offence punishable under section 124 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 161.

(3) That you, being a public servant in the Department, directly accepted from [*state the name*], for another party [*state the name*], a gratification, other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under section 161 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 166.

(4) That you, on or about the day of , at , did [*or* omitted to do, *as the case may be*] , such conduct being contrary to the provisions of Act , section , and known by you to be prejudicial to , and thereby committed an offence punishable under section 166 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 193.

(5) That you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", which statement you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 304.

(6) That you, on or about the day of , at , committed culpable homicide not amounting to murder, causing the death of , and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 306.

(7) That you, on or about the day of , at , abetted the commission of suicide by *A. B.*, a person in a state of intoxication, and thereby committed an offence punishable under section 306 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 325.

(8) That you, on or about the day of , at , voluntarily caused grievous hurt to , and thereby committed an offence punishable under section 325 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 392.

(9) That you, on or about the day of , at , robbed [*state the name*] and thereby committed an offence punishable under section 392 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On section 395.

(10) That you, on or about the day of , at , committed dacoity, an offence punishable under section 395 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(II.)—Charges with two or more Heads.

(*a*) I, [*name and office of Magistrate, &c.*], hereby charge you [*name of accused person*] as follows:—

On section 241.

(*b*) *First.*—That you, on or about the day of , at , knowing a coin to be counterfeit, delivered the same to another person, by name *A. B.*, as genuine, and thereby committed an offence punishable

SCHEDULE V—*continued.*

punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , knowing a coin to be counterfeit, attempted to induce another person, by name *A. B.*, to receive it as genuine, and thereby committed an offence punishable under section 241 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

(*c*) And I hereby direct that you be tried by the said Court on the said charge.

[*Signature and seal of the Magistrate.*]

[*To be substituted for* (*b*):—]

On sections 302 and 304.

(2) *First.*—That you, on or about the day of , at , committed murder by causing the death of , and thereby committed an offence punishable under section 302 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , by, causing the death of , committed culpable homicide not amounting to murder, and thereby committed an offence punishable under section 304 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

On sections 379 and 382.

(3) *First.*—That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Secondly.—That you, on or about the day of , at , committed theft, having made preparation for causing death to a person in order to the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Thirdly.—That you, on or about the day of , at , committed theft, having made preparation for causing restraint to a person in order to the effecting of your escape after the committing of such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Fourthly.—That you, on or about the day of , at , committed theft, having made preparation for causing fear of hurt to a person in order to the retaining of property taken by such theft, and thereby committed an offence punishable under section 382 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

Alternative charges on section 193.

(4) That you, on or about the day of , at , in the course of the inquiry into before , stated in evidence that " ", and that you, on or about the day of , at , in the course of the trial of , before , stated in evidence that " ", one of which statements you either knew or believed to be false, or did not believe to be true, and thereby committed an offence punishable under section 193 of the Indian Penal Code, and within the cognizance of the Court of Session [*or* High Court].

[*In cases tried by Magistrates, substitute* "within my cognizance" *for* "within the cognizance of the Court of Session," *and in* (*c*) *omit* "by the said Court."]

(III.)—Charge for theft after a previous Conviction.

I, (*name and office of Magistrate, &c.,*), hereby charge you (*name of accused person*) as follows:—

That you, on or about the day of , at , committed theft, and thereby committed an offence punishable under section 379 of the

SCHEDULE V—*continued.*

the Indian Penal Code and within the cognizance of the Court of Session [*or* {High Court / Magistrate} *as the case may be*].

And you the said (*name of accused*) stand further charged that you, before the committing of the said offence, that is to say, on the day of , had been convicted by the (*state Court by which conviction was had*) at of an offence punishable under Chapter XVII of the Indian Penal Code with imprisonment for a term of three years, that is to say, the offence of house-breaking by night (*describe the offence in the words used in the section under which the offence was convicted*), which conviction is still in full force and effect, and that you are thereby liable to enhanced punishment under section 75 of the Indian Penal Code.

And I hereby direct that you be tried, &c.

XXIX.—WARRANT OR COMMITMENT ON A SENTENCE OF IMPRISONMENT OR FINE IF PASSED BY A MAGISTRATE.

(*See sections 245 and 258.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar for 18 , was convicted before me (*name and official designation*) of the offence of (*mention the offence or offences concisely*) under section (*or* sections) of the Indian Penal Code (*or* of Act), and was sentenced to (*state the punishment fully and distinctly*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and there carry the aforesaid sentence into execution according to law.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XXX.—WARRANT OF IMPRISONMENT ON FAILURE TO RECOVER AMENDS BY DISTRESS.

(*See section 250.*)

To the Superintendent (*or* Keeper) of the Jail at

WHEREAS (*name and description*) has brought against (*name and description of the accused person*) the complaint that (*mention it concisely*), and the same has been dismissed as frivolous (*or* vexatious), and the order of dismissal awards payment by the said (*name of complainant*) of the sum of rupees as amends; and whereas the said sum has not been paid and cannot be recovered by distress of the moveable property of the said (*name of complainant*) and an order has been made for his simple imprisonment in jail for the period of days, unless the aforesaid sum be sooner paid;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), subject to the provisions of section 69 of the Indian Penal Code, unless the said sum be sooner paid, and on the receipt thereof forthwith to set him at liberty; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) *Signature.*)

XXXI.

SCHEDULE V—*continued.*

XXXI.—Summons to a Witness.

(*See sections 68 and 252.*)

To of

Whereas complaint has been made before me that of has (*or* is suspected to have) committed the offence of (*state the offence concisely, with time and place*) and it appears to me that you are likely to give material evidence for the prosecution;

You are hereby summoned to appear before this Court on the day of next at ten o'clock in the forenoon, to testify what you know concerning the matter of the said complaint, and not to depart thence without leave of the Court; and you are hereby warned that if you shall without just excuse neglect or refuse to appear on the said date, a warrant will be issued to compel your attendance.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXII.—Precept to District Magistrate to summon Jurors and Assessors.

(*See section 326.*)

To the District Magistrate of

Whereas a Criminal Session is appointed to be held in the Court-house at on the day of next, and the names of the persons herein stated have been duly drawn by lot from among those named in the revised list of jurors and assessors furnished to this Court; you are hereby required to summon the said persons to attend at the said Court of Session at 10 A. M. on the said date, and, within such date, to certify that you have done so in pursuance of this precept.

(*Here enter the names of Jurors and Assessors.*)

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXIII.—Summons to Assessor or Juror.

(*See section 328.*)

To (*name*) of (*place.*)

Pursuant to a precept directed to me by the Court of Session of requiring your attendance as an Assessor (*or* a Juror) at the next Criminal Session, you are hereby summoned to attend at the said Court of Session at (*place*) at ten o'clock in the forenoon on the day of next.

Given under my hand and seal of office, this day of , 18

(*Seal.*) (*Signature.*)

XXXIV.—Warrant of Commitment under Sentence of Death.

(*See section 374.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at the Session held before me on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was duly convicted of the offence of culpable homicide amount-

ing

SCHEDULE V—*continued.*

ing to murder under section of the Indian Penal Code, and sentenced to suffer death, subject to the confirmation of the said sentence by the Court of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*prisoner's name*) into your custody in the said jail, together with this warrant, and him there safely to keep until you shall receive the further warrant or order of this Court, carrying into effect the order of the said Court.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXV.—Warrant of Execution on a Sentence of Death.

(*See section 381.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the Session held before me on the day of , 18 , has been by a warrant of this Court, dated the day of , committed to your custody under sentence of death, and whereas the order of the Court of confirming the said sentence has been received by this Court;

This is to authorize and require you the said Superintendent (*or* Keeper) to carry the said sentence into execution by causing the said to be hanged by the neck until he be dead, at (*time and place of execution*), and to return this warrant to the Court with an endorsement certifying that the sentence has been executed.

Given under my hand and the seal of the Court, this day of 18

(*Seal*) (*Signature.*)

XXXVI.—Warrant after a Commutation of a Sentence.

(*See sections 381 and 382.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Session held on the day of , 18 , (*name of prisoner*), the (1st, 2nd, 3rd, *as the case may be*) prisoner in case No. of the Calendar at the said Session, was convicted of the offence of , punishable under section of the Indian Penal Code, and sentenced to , and was thereupon committed to your custody; and whereas by the order of the Court of (a duplicate of which is hereunto annexed) the punishment adjudged by the said sentence has been commuted to the punishment of transportation for life (*or, as the case may be*);

This is to authorize and require you the said Superintendent (*or* Keeper), safely to keep the said (*prisoner's name*) in your custody in the said jail, as by law is required, until he shall be delivered over by you to the proper authority and custody for the purpose of his undergoing the punishment of transportation under the said order,

or

if the mitigated sentence is one of imprisonment, say, after the words "custody in the said jail," "and there to carry into execution the punishment of imprisonment under the said order according to law."

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XXXVII.

SCHEDULE V—*continued.*

XXXVII.—Warrant to levy a Fine by Distress and Sale.

(*See section 386.*)

To (*name and designation of the police-officer or other person, or persons, who is or are to execute the warrant*).

Whereas (*name and description of the offender*) was on the day of 18 , convicted before me of the offence of (*mention the offence concisely*) and sentenced to pay a fine of rupees , and whereas the said (*name*), although required to pay the said fine, has not paid the same or any part thereof;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the District of ; and, if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said fine; returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXVIII.—Warrant of Commitment in certain Cases of Contempt when a Fine is imposed.

(*See section 480.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas at a Court holden before me on this day (*name and description of the offender*) in the presence (*or* view) of the Court committed wilful contempt;

And whereas for such contempt the said (*name of offender*) has been adjudged by the Court to pay a fine of rupees , or in default to suffer simple imprisonment for the space of (*state the number of months or days*);

This is to authorize and require you, the Superintendent (*or* Keeper) of the said Jail, to receive the said (*name of offender*) into your custody, together with this warrant, and him safely to keep in the said jail for the said period of (*term of imprisonment*), unless the said fine be sooner paid; and, on the receipt thereof, forthwith to set him at liberty, returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XXXIX.—Magistrate's or Judge's Warrant of Commitment of Witness refusing to answer.

(*See section 485.*)

To (*name and designation of officer of Court*)

Whereas (*name and description*) being summoned (*or* brought before this Court) as a witness and this day required to give evidence on an inquiry into an alleged offence, refused to answer a certain question (*or* certain questions) put to him touching the said alleged offence, and duly recorded, without alleging any just excuse for such refusal, and for his contempt has been adjudged detention in custody for (*term of detention adjudged*);

This

SCHEDULE V—*continued.*

This is to authorize and require you to take the said (*name*) into custody, and him safely keep in your custody for the space of days unless in the meantime he shall consent to be examined and to answer the questions asked of him, and on the last of the said days, or forthwith on such consent being known, to bring him before this Court to be dealt with according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

XL.—Warrant of Imprisonment on Failure to pay Maintenance.

(*See section 488.*)

To the Superintendent (*or* Keeper) of the Jail at

Whereas (*name, description and address*) has been proved before me to be possessed of sufficient means to maintain his wife (*name*) [*or* his child (*name*), who is by reason of (*state the reason*) unable to maintain herself (*or* himself)] and to have neglected (*or* refused) to do so, and an order has been duly made requiring the said (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees ; and whereas it has been further proved that the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of : And thereupon an order was made adjudging him to undergo simple (*or* rigorous) imprisonment in the said jail for the period of ;

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody in the said jail, together with this warrant, and there carry the said order into execution according to law; returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLI.—Warrant to enforce the Payment of Maintenance by Distress and Sale.

(*See section 488.*)

To (*name and designation of the Police-officer or other person to execute the warrant*).

Whereas an order has been duly made requiring (*name*) to allow to his said wife (*or* child) for maintenance the monthly sum of rupees , and whereas the said (*name*) in wilful disregard of the said order has failed to pay rupees , being the amount of the allowance for the month (*or* months) of ;

This is to authorize and require you to make distress by seizure of any moveable property belonging to the said (*name*) which may be found within the district of , and if within (*state the number of days or hours allowed*) next after such distress the said sum shall not be paid (*or* forthwith), to sell the moveable property distrained, or so much thereof as shall be sufficient to satisfy the said sum; returning this warrant with an endorsement certifying what you have done under it, immediately upon its execution.

Given under my hand and the seal of the Court, this day of 18

(*Seal.*) (*Signature.*)

XLII.

SCHEDULE V—*continued.*

XLII.—Bond and Bail-bond on a preliminary Inquiry before a Magistrate.

(*See sections 496 and 499.*)

I, (*name*), of (*place*), being brought before the Magistrate of (*as the case may be*) charged with the offence of , and required to give security for my attendance in his Court and at the Court of Session, if required, do bind myself to attend at the Court of the said Magistrate on every day of the preliminary inquiry into the said charge, and should the case be sent for trial by the Court of Session, to be, and appear, before the said Court when called upon to answer the charge against me; and, in case of my making default herein, I bind myself to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees

Dated this day of , 18 .

(*Signature*).

I hereby declare myself (*or* We jointly and severally declare ourselves and each of us) surety (*or* sureties) for the said (*name*) that he shall attend at the Court of on every day of the preliminary inquiry into the offence charged against him, and, should the case be sent for trial by the Court of Session, that he shall be, and appear, before the said Court to answer the charge against him, and in case of his making default therein, I bind myself (*or* we bind ourselves) to forfeit to Her Majesty the Queen, Empress of India, the sum of rupees .

Dated this day of , 18 .

(*Signature.*)

XLIII.—Warrant to discharge a Person imprisoned on Failure to give Security.

(*See section 500.*)

To the Superintendent (*or* Keeper) of the Jail at (*or other officer in whose custody the person is*).

Whereas (*name and description of prisoner*) was committed to your custody under warrant of this Court, dated the day of , and has since with his surety (*or* sureties) duly executed a bond under section 499 of the Code of Criminal Procedure;

This is to authorize and require you forthwith to discharge the said (*name*) from your custody, unless he is liable to be detained for some other matter.

Given under my hand and the seal of the Court, this day of 18 .

(*Seal.*) (*Signature.*)

XLIV.—Warrant of Attachment to enforce a Bond.

(*See section 514.*)

To the Police-officer in charge of the Police station at

Whereas (*name, description and address of person*) has failed to appear on (*mention the occasion*) pursuant to his recognizance, and has by such default forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*); and whereas the said (*name of person*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him.

This is to authorize and require you to attach any moveable property of the said (*name*) that you may find within the District of , by seizure and detention, and, if the said amount

SCHEDULE V—*continued.*

amount be not paid within three days, to sell the property so attached or so much of it as may be sufficient to realize the amount aforesaid, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLV.—Notice to Surety on Breach of a Bond.

(*See section 514.*)

To of

Whereas on the day of , 18 , you became surety for (*name*) of (*place*) that he should appear before this Court on the day of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has failed to appear before this Court, and by reason of such default you have forfeited the aforesaid sum of rupees ;

You are hereby required to pay the said penalty or show cause, within days from this date, why payment of the said sum should not be enforced against you.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVI.—Notice to Surety of Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To of .

Whereas on the day of , 18 , you became surety by a bond for (*name*) of (*place*) that he would be of good behaviour for the period of , and bound yourself in default thereof to forfeit the sum of rupees to Her Majesty the Queen, Empress of India; and whereas the said (*name*) has been convicted of the offence of (*mention the offence concisely*) committed since you became such surety, whereby your security-bond has become forfeited;

You are hereby required to pay the said penalty of rupees , or to show cause within days why it should not be paid.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVII.—Warrant of Attachment against a Surety.

(*See section 514.*)

To .

Whereas (*name, description and address*) has bound himself as surety for the appearance of (*mention the condition of the bond*), and the said (*name*) has made default, and thereby forfeited to Her Majesty the Queen, Empress of India, the sum of rupees (*the penalty in the bond*);

This is to authorize and require you to attach any moveable property of the said (*name*) which you may find within the District of , by seizure and detention; and, if the said amount be not paid within three days, to sell the property so attached, or so much of it as may be sufficient to realize the amount aforesaid, and make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLVIII.

SCHEDULE V—*continued.*

XLVIII.—Warrant of Commitment of the Surety of an Accused Person admitted to Bail.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at

Whereas (*name and description of surety*) has bound himself as a surety for the appearance of (*state the condition of the bond*), and the said (*name*) has therein made default whereby the penalty mentioned in the said bond has been forfeited to Her Majesty the Queen, Empress of India; and whereas the said (*name of surety*) has, on due notice to him, failed to pay the said sum or show any sufficient cause why payment should not be enforced against him, and the same cannot be recovered by attachment and sale of moveable property of his, and an order has been made for his imprisonment in the Civil Jail for (*specify the period*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody with this warrant and him safely to keep in the said Jail for the said (*term of imprisonment*), and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

XLIX.—Notice to the Principal of Forfeiture of a Bond to keep the Peace.

(*See section 514.*)

To (*name, description and address*).

Whereas on the day of , 18 , you entered into a bond not to commit, &c. (*as in the bond*), and proof of the forfeiture of the same has been given before me and duly recorded;

You are hereby called upon to pay the said penalty of rupees , or to show cause before me within days why payment of the same should not be enforced against you.

Dated this day of , 18 .

(*Seal.*) (*Signature.*)

L.—Warrant to attach the Property of the Principal on Breach of a Bond to keep the Peace.

(*See section 514.*)

To (*name and designation of Police-officer*) at the Police-station of

Whereas (*name and description*) did on the day of , 18 , enter into a bond for the sum of rupees , binding himself not to commit a breach of the peace, &c. (*as in the bond*), and proof of the forfeiture of the said bond has been given before me and duly recorded; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same; and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18

(*Seal.*) (*Signature.*)

SCHEDULE V—*concluded.*

LI.—Warrant of Imprisonment on Breach of a Bond to keep the Peace.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas proof has been given before me and duly recorded that (*name and description*) has committed a breach of the bond entered into by him to keep the peace, whereby he has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas the said (*name*) has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper) of the said Civil Jail, to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); and to return this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LII.—Warrant of Attachment and Sale on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Police-officer in charge of the Police-station at .

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof has been given before me and duly recorded of the commission by the said (*name*) of the offence of , whereby the said bond has been forfeited; and whereas notice has been given to the said (*name*) calling upon him to show cause why the said sum should not be paid, and he has failed to do so or to pay the said sum;

This is to authorize and require you to attach by seizure moveable property belonging to the said (*name*) to the value of rupees which you may find within the District of , and, if the said sum be not paid within , to sell the property so attached, or so much of it as may be sufficient to realize the same, and to make return of what you have done under this warrant immediately upon its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

LIII.—Warrant of Imprisonment on Forfeiture of Bond for Good Behaviour.

(*See section 514.*)

To the Superintendent (*or* Keeper) of the Civil Jail at .

Whereas (*name, description and address*) did on the day of , 18 , give security by bond in the sum of rupees for the good behaviour of (*name, &c., of the principal*), and proof of the breach of the said bond has been given before me and duly recorded, whereby the said (*name*) has forfeited to Her Majesty the Queen, Empress of India, the sum of rupees ; and whereas he has failed to pay the said sum or to show cause why the said sum should not be paid, although duly called upon to do so, and payment thereof cannot be enforced by attachment of his moveable property, and an order has been made for the imprisonment of the said (*name*) in the Civil Jail for the period of (*term of imprisonment*);

This is to authorize and require you, the said Superintendent (*or* Keeper), to receive the said (*name*) into your custody, together with this warrant, and him safely to keep in the said Jail for the said period of (*term of imprisonment*); returning this warrant with an endorsement certifying the manner of its execution.

Given under my hand and the seal of the Court, this day of , 18 .

(*Seal.*) (*Signature.*)

Government of India Central Printing Office.—No. 765 L. D.—5-5-82.—5,000.

THE INDIAN TARIFF ACT, 1882.

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SCHEDULE I.—ACTS REPEALED.

SCHEDULE II.—IMPORT TARIFF.

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[*Price two annas.*]

ACT No. XI of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 10th March, 1882.)

An Act to amend the law relating to Customs Duties, and for other purposes.

WHEREAS it is expedient to amend the law relating to the duties of customs on goods imported and exported by sea, and to provide for the levy of duties on goods crossing the frontier of certain Foreign European Settlements in India and of the territories of certain Native Chiefs and for fixing a maximum duty of excise on spirit manufactured in British India; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Indian Tariff Act, 1882." Short title.

It extends to the whole of British India except Aden; and it shall come into force on the passing thereof. Local extent. Commencement.

2. The Acts mentioned in the first schedule hereto annexed are repealed to the extent specified therein: Repeal of Acts.

But all notifications published, and rules and orders made, under any of such Acts, and now in force, shall, so far as they are consistent herewith, be deemed to have been respectively published and made hereunder: Saving clause.

All references made to the Indian Tariff Act, 1875, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to this Act:

And nothing herein contained authorizes the levy of duties of customs on any article carried from one port in British India to another, except salt, opium and spirit.

3. There

Duties specified in schedules to be levied.

3. There shall be levied and collected, in every port to which this Act applies, the duties specified in the second and third schedules hereto annexed.

Export of pepper from Cochin.

4. On all pepper exported by sea from the port of Cochin there shall be levied such duty not exceeding nine rupees per khandí as the Governor of Fort Saint George in Council from time to time determines; and at the close of each year, or as soon thereafter as may be convenient, the Customs-collector at the said port shall, after deducting the expenses of collection, pay the duty collected under this section to the Governments of Travancore and Cochin in such proportion and in such manner as the Governor of Fort Saint George in Council from time to time directs.

Duties on goods crossing frontiers of Foreign European Settlements in Presidency of Madras, of foreign territory.

5. Duties of customs shall be levied at the rates respectively prescribed in the second and third schedules hereto annexed on goods passing by land out of or into—

(*a*) Foreign European Settlements situate on the line of coast within the limits of the Presidency of Fort Saint George;

(*b*) any territory declared, under the power next hereinafter conferred, to be foreign territory.

Power to declare territory foreign.

Subject to the control of the Governor General in Council, the Governor of Fort St. George in Council and the Governor of Bombay in Council may, from time to time, by notification in the local official Gazette, respectively declare that the territory of any Native Chief, situate within, or bordering on, the territories respectively administered by such Governors, but not subject to the jurisdiction of the Courts and Civil authorities of such territories, shall be deemed, for the purposes of this section, to be foreign territory.

The Governor General in Council may, from time to time, by notification in the *Gazette of India*, declare that the territory of any other Native Chief shall be deemed, for the purposes of this section, to be foreign territory.

Excise-duty on spirit distilled in British India.

6. And whereas it is expedient that the duty of excise on spirit distilled in British India should bear

a due proportion to the customs-duty on spirit imported into British India, it is hereby further enacted as follows:—

Subject to any general rules or special orders which the Governor General in Council may, from time to time, make in this behalf, the Local Government may, from time to time, by notification in the local official Gazette, fix the duty of excise leviable on spirit manufactured in all or any of the distilleries situate in the territories under its administration, or in any part of such territories, at any rate not exceeding the rate fixed for imported spirit by the second schedule hereto annexed;

and all provisions now in force as to the levy of duty now chargeable on spirit shall apply to spirit upon which the duty declared under this section has not been paid.

In Act No. XVI of 1863, section one, for the words "calculated at ten" the words "not exceeding five" shall be substituted.

Duty on spirit, opium and salt when protected by a certificate.

7. Spirit, opium and salt imported from any port in British India, and protected by the certificate of an officer empowered in that behalf by the Governor General in Council or the Local Government, are chargeable with only the amount, if any, by which the duty leviable thereon under the second schedule hereto annexed exceeds the duty shown by such certificate to have been already paid in respect thereof.

The amount, if any, paid to the Government as the price of such opium or salt is not duty within the meaning of this section.

Application of certain provisions as to duties and goods.

8. So far as regards the Presidency of Fort St. George, the unrepealed provisions of Act No. VI of 1844, and so far as regards the Presidency of Bombay, the unrepealed provisions of Act No. XXIX of 1857, relating to the levy of duties and to dutiable goods, shall, *mutatis mutandis*, apply to duties levied and goods liable to duty under or by virtue of section five, clause (*b*).

Power to cancel notifications.

9. All notifications published hereunder may be cancelled by the authority publishing the same.

SCHEDULE I.

SCHEDULE I.

ACTS REPEALED.

Number and year.	Short Title.	Extent of Repeal.
XI of 1869 ...	The Land Customs (Madras and Bombay) Act, 1869.	So much as has not been repealed.
XVI of 1875 ...	The Indian Tariff Act, 1875 ...	Ditto.
XI of 1878 ...	The Indian Arms Act, 1878 ...	Section 8 and the second schedule.

SCHEDULE II.

IMPORT TARIFF.

No.	Names of Articles.	Per .	Tariff valuation.	Duty.	
1	ARMS, AMMUNITION AND MILITARY STORES—				
	Fire-arms and parts thereof—			Rs.	As.
	1. Fire-arms other than pistols, for each ...	...	...	50	0
	2. Barrels for the same, whether single or double, for each ...	...	...	30	0
	3. Pistols, for each ...	...	...	15	0
	4. Barrels for the same, whether single or double, for each ...	...	...	10	0
	5. Springs used for fire-arms, for each ...	...	...	8	0
	6. Gunstocks, sights, blocks and rollers, for each ...	...	...	5	0
	7. Revolver-breeches, for each cartridge they will carry ...	...	...	2	
	8. Extractors, nippers, heel plates, pins, screws, tangs, bolts, thumb-pieces, triggers, trigger-guards, hammers, pistons, plates, and all other parts of a fire-arm not herein otherwise provided for, and all tools used for cleaning or putting together or loading the same, for each...	...	...	1	8

SCHEDULE II—*(continued).*

No.	Names of Articles.	Per	Tariff valuation.	Duty.
				Rs. As.
	9. Machines for making or loading or closing cartridges, for each	...	...	10 0
	10. Machines for capping cartridges, for each	...	...	2 8
	Exception I.—Articles falling under the 5th, 6th, 8th, 9th, or 10th head of the above list, when they appertain to a fire-arm falling under the 1st or 3rd head, and are fitted into the same case with such fire-arm, are free.			
	Exception II.—Arms forming part of the regular equipment of an officer entitled to wear diplomatic, military or police uniform, and a revolver or a pair of pistols accompanying a military officer, are free.			
	Proviso 1.—No duty in excess of ten per cent. *ad valorem* shall be levied upon any of the articles mentioned in the above list when they are imported in reasonable quantity, for his own private use, by any person lawfully entitled to possess the same.			
	Proviso 2.—When any articles which have been otherwise imported, and upon which duty has been levied or is leviable under this number, are purchased retail from the importer by a person lawfully entitled as aforesaid, in reasonable quantity, for his own private use, the importer may apply to the Customs-collector for a refund or remission (as the case may be) of so much of the duty thereon as is in excess of ten per cent. *ad valorem*; and if such			

SCHEDULE II—*(continued).*

No.	Names of Articles.	Per	Tariff valuation.	Rate of Duty.
	collector is satisfied as to the identity of the articles, and that such importer is in other respects entitled to such refund or remission, he shall grant the same accordingly.			
			Rs. A.	
	Gunpowder, common ...	lb.	0 5	10 per cent.
	" sporting ...	lb.	1 0	
	All other sorts ...	...	*Ad valorem*	
2	LIQUORS—			
	Ale, beer and porter, except when condensed or concentrated ...	Impl. Gallon or six quart bottles ...	...	One anna.
	Cider, and other fermented liquors ...			
	Liqueurs	Ditto ...	...	Rs. 4.
	Spirit intended to be used exclusively in arts or manufactures, or in chemistry, and which has been rendered effectually and permanently unfit for human consumption.	...	*Ad valorem*	5 per cent.
	Spirit, when used in drugs, medicines or chemicals in a proportion less than twenty per cent. of spirit of the strength of London proof	...	*Ad valorem*	5 per cent.
	Spirit when so used in a proportion of twenty per cent. and upwards	Impl. Gallon or six quart bottles of the strength of London proof.	...	Rs. 4, and the duty to be increased in proportion as the strength of the spirit exceeds London proof.
	Spirit, perfumed, in wood, or in bottles containing more than four ounces	Ditto ...	...	
	Spirit, other sorts ...	Ditto ...	...	
	Wines—			
	Champagne and all other sparkling wines	Impl. Gallon or six quart bottles.	...	Rs. 2-8.
	All other sorts of wines	Ditto ...	...	Re. 1.
3	OPIUM NOT COVERED BY A GOVERNMENT PASS.	Ser of 80 tolas	...	Rs. 24.

SCHEDULE II—*(concluded).*

No.	Names of Articles.	Per	Tariff valuation.	Rate of Duty.
4	SALT	Indian maund of 82⅔ lbs. avoirdupois weight.	...	The rate at which excise-duty is for the time being leviable on salt manufactured in the place where the import takes place.

SCHEDULE III.

EXPORT TARIFF.

Name of Article.	Per	Tariff valuation.	Rate of Duty.
RICE whether husked or unhusked including rice-flour ...	Indian maund of 82⅔ lbs. avoirdupois weight.	...	3 annas.

Amendments.	Re[illegible]
[illegible]—In No. 2 of this Schedule, as [illegible] II of 1887—	.....

Govt. Central Press.—No. 795 L. D.—18-3-82.—3,600.

THE INDIAN SALT ACT, 1882.

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BENGAL SECRETARIAT LIBRARY.

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[*Price three annas.*]

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BENGAL SECRETARIAT LIBRARY.

ACT No. XII of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 10th March, 1882.)

An Act for regulating the duty on Salt, and for other purposes.

WHEREAS it is expedient to amend the law relating to the levy of duty on salt, and to the import and transit of salt, and the manufacture of salt and saltpetre, into, over and in British India; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Indian Salt Act," 1882; and it shall come into force at once. Short title. Commencement.

This section, sections two, seven and eight, and so much of this Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India; Local extent.

The rest of this Act extends to the territories for the time being respectively administered by the Lieutenant-Governors of the North-Western Provinces and the Panjáb and the Chief Commissioners of Oudh, the Central Provinces and Ajmír and Mairwára, to the Province of Sindh, to the Districts of the Patna Division, and to British territory under the jurisdiction of the Agent to the Governor General in Central India;

and any portion of this Act, other than the portions specified in the second paragraph of this section, may be extended, by order of the Governor General in Council published in the *Gazette of India*, to any Power to extend Act.

part

part of British India other than the territories, Province and Districts mentioned in the third paragraph of this section.

Repeal of enactments.

2. The enactments specified in the schedule hereto annexed are repealed to the extent mentioned in the third column thereof; but all rules made, licenses and passes granted, prices and duties fixed, notifications published and powers conferred under any such enactment and now in force shall, so far as they are consistent with this Act, be deemed to have been respectively made, granted, fixed, published and conferred hereunder.

Interpretation-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

"the said territories":

the expression "the said territories" means the territories to which the section of this Act, in which that expression occurs, for the time being extends;

"Assistant Commissioner":

"Assistant Commissioner" means an Assistant Commissioner of Northern India Salt-revenue, and also includes any person invested by the Local Government with the powers of an Assistant Commissioner under this Act;

"Salt-revenue officer":

"Salt-revenue officer" means any officer of the Northern India Salt Department, and also includes any person invested by the Local Government with any of the powers of a Salt-revenue officer under this Act;

"Saltpetre"

"Saltpetre" includes rasí, sajjí and all other substances manufactured from saline earth, and khárí-nún and every form of sulphate or carbonate of soda; and

"Manufacture of salt."

"manufacture of salt" includes the separation or purification of salt obtained in the manufacture of saltpetre, the separation of salt from earth or other substance so as to produce alimentary salt, and the excavation or removal of natural saline deposits or efflorescence.

Powers of Commissioner of Division by whom to be exercised.

4. The powers and duties conferred and imposed by this Act on a Commissioner of a Division may, in places where there is no such Commissioner, be exercised

cised and performed by such officer as the Governor General in Council may from time to time appoint in this behalf.

5. At the head of the administration of the salt-revenue under this Act there shall be an officer, called the Commissioner of Northern India Salt-revenue, who shall be appointed, and may be suspended or removed, by the Governor General in Council.

Commissioner of Northern India Salt-revenue.

CHAPTER II.

MANUFACTURE AND REFINING OF SALT AND SALTPETRE.

6. The Governor General in Council may, from time to time, by rule—

Power of Governor General in Council—

(*a*) prohibit absolutely, or subject to such conditions as he thinks fit, the manufacture of salt, or the manufacture or refining of saltpetre, throughout the whole or any portion of the said territories;

to regulate manufacture and refining of salt and saltpetre;

(*b*) fix fees for the following licenses, not exceeding in the case of each such license the amount hereinafter mentioned:—

to fix fees for licenses;

	Rs.
License to manufacture and refine saltpetre and to separate and purify salt in the process of such manufacture and refining	50
License to manufacture saltpetre	2
License to manufacture sulphate of soda (*khárínún*) by solar heat in evaporating pans ...	10
License to manufacture sulphate of soda (*khárínún*) by artificial heat	2
License to manufacture other saline substances	2

(*c*) determine the manner, time and place in and at which, and the persons by whom, any duty imposed hereunder shall be collected in the said territories;

to regulate the collection of duties;

(*d*) define an area no point in which shall be more than one hundred yards from the nearest point of any place in which salt is stored or sold by or on behalf of Government, or of any manufactory and its appurtenances in or on which saltpetre is manufactured or refined,

to regulate possession of salt in vicinity of places where saltpetre is manufactured;

refined, and regulate the possession, storage and sale of salt within such area;

to regulate possession of salt in vicinity of places where salt is manufactured.

(*e*) define an area round any other place in which salt is manufactured, and regulate the possession, storage and sale of salt within such area.

CHAPTER III.

DUTY AND PRICE OF SALT.

Power of Governor General in Council—

to impose a duty on manufacture of salt;

to reduce or remit duties;

to fix minimum price of salt excavated, &c., by Government.

7. The Governor General in Council may from time to time by rule consistent with this Act—

(*a*) impose a duty, not exceeding three rupees per maund of $82\frac{2}{7}$ pounds avoirdupois, on salt manufactured in, or imported by land into, any part of British India;

(*b*) reduce or remit any duty so imposed, and re-impose any duty so reduced or remitted;

(*c*) fix the minimum price at which salt excavated, manufactured or sold by or on behalf of the Government of India shall be sold.

In calculating the amount of duty payable under this section, fractions of quarter maunds may be reckoned as quarter maunds.

Power of Local Government to fix minimum price of salt excavated, &c.

8. Subject to any general rules or special orders which the Governor General in Council may from time to time make in this behalf, the Local Government may from time to time, by notification in the local official Gazette, fix the minimum price at which salt excavated, manufactured or sold by or on behalf of such Local Government shall be sold.

CHAPTER IV.

OFFENCES AGAINST THE SALT-REVENUE.

Penalties.

9. Whoever commits any of the following offences (namely):—

(*a*) does anything in contravention of this Act or of any rule made hereunder;

(*b*) evades

(*b*) evades payment of any duty or charge payable under this Act or any such rule; or

(*c*) attempts to commit, or abets within the meaning of the Indian Penal Code the commission of, any of the offences mentioned in clauses (*a*) and (*b*) of this section,

shall for every such offence be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both;

and the convicting Magistrate, on the application of the Assistant Commissioner or Salt-revenue officer, may declare to be confiscated all works, materials and implements constructed or prepared for the purpose of manufacturing or refining salt or saltpetre contrary to the provisions of this Act or any such rule.

Punishment on second and subsequent convictions.

10. Any person convicted of an offence under section nine, after having been previously convicted of an offence under that section or section 11 of the Inland Customs Act, 1875, or under any enactment repealed by that Act, shall be punished with imprisonment for a term which may extend to six months, in addition to the punishment which may be inflicted for a first offence under section nine;

and every such person shall, upon every subsequent conviction of an offence under section nine, be liable to imprisonment for a term which may extend to six months, in addition to any term of imprisonment to which he was liable at his last previous conviction.

Charge by whom to be preferred.

11. A charge of an offence under section nine, or under section 11 of the Inland Customs Act, 1875, shall not be entertained except on the complaint of an Assistant Commissioner or other Salt-revenue officer not inferior in rank to a Sub-Inspector,

Limitation.

and no such complaint shall be admitted unless it is preferred within six months after the commission of the offence to which it refers.

All

Jurisdiction.

All such offences shall be tried by a Magistrate exercising powers not less than those of a Magistrate of the second class.

Confiscation of articles in respect of which offence committed.

12. All salt or saltpetre in respect of which any offence mentioned in section nine has been committed, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals and conveyances used in carrying it, shall be liable to confiscation.

When the article seized exceeds five sers in weight, the Commissioner of the Division in which the seizure takes place may, if satisfied on the report of any Salt-revenue officer, or on such inquiry as he thinks fit to make, that such offence has been committed, declare such article to be confiscated or impose such lesser penalty in lieu of confiscation as to him may seem fit.

If the article seized does not exceed five sers in weight, the Assistant Commissioner shall possess the same powers in regard to its disposal as by this section are conferred on the Commissioner of the Division in regard to quantities exceeding five sers, and may also confiscate any vessel, package or covering in which such article is contained.

Whenever such Commissioner declares under this section any article to be confiscated, he may also declare to be confiscated any vessel, package or covering in which such article is contained, and any animal or conveyance used in carrying it.

Power to levy additional duty as penalty.

13. The Governor General in Council may, from time to time, by rule, direct that any Salt-revenue officer, not inferior in rank to an Assistant Inspector, if satisfied in such manner as such rule may prescribe that any offence mentioned in section nine has been committed in respect of any dutiable salt, shall, instead of making a complaint to a Magistrate, or instituting proceedings with a view to confiscation, impose as a penalty an additional duty on such salt not exceeding the duty leviable thereon under Chapter III of this Act.

The

The imposition of every such penalty shall be at once reported, if the salt, in respect of which an offence has been committed, exceeds five sers in weight, to the Commissioner of the Division in which such penalty is imposed, and, if such salt does not exceed five sers in weight, to the Assistant Commissioner,

and shall require the sanction of the Commissioner or Assistant Commissioner, as the case may be, to to whom it is so reported.

Punishment for connivance at offences mentioned in section nine.

14. Any zamíndár or other proprietor of land, and any agent of a zamíndár or proprietor of land, who wilfuly connives at any offence mentioned in section nine, shall for every such offence be punishable by any Magistrate exercising powers not less than those of a Magistrate of the second class with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

CHAPTER V.

POWERS OF STOPPAGE, SEARCH, SEIZURE AND ARREST.

Power to search places where article is manufactured under license.

15. Any Salt-revenue officer empowered in this behalf by the Local Government may at any time enter and search any place in which any article is manufactured or refined under a license granted under this Act or any rule made hereunder.

Power to detain suspected person and to seize goods liable to confiscation.

16. Any Salt-revenue officer may stop and detain any person whom he has reason to believe to be liable to punishment under this Act;

and may seize any salt or saltpetre in respect of which there is reason to believe that any offence mentioned in section nine has been committed, or that any duty is payable, together with the vessels, packages or coverings in which such salt or saltpetre is contained, and the animals or conveyances used in carrying it.

Power to arrest.

17. Any Salt-revenueofficer may arrest any person whom he has reason to believe to have committed any such offence as last aforesaid.

18. Whenever

Procedure of officer having reason to believe unlawful manufacture.

18. Whenever any Salt-revenue officer, not inferior in rank to a Sub-Inspector, has reason to believe that salt or saltpetre is being unlawfully manufactured, refined or stored in an unlicensed place,

such officer shall first record in writing (so far as may be practicable) (*a*) the name, residence, and calling of the informant (if any); (*b*) the locality and description of the house, boat or place where the officer believes that the salt or saltpetre is being so manufactured, refined or stored; (*c*) the name of the person by or for whom the salt or saltpetre is so manufactured, refined or stored; and (*d*) the supposed quantity and description of the salt or saltpetre, with the grounds for believing the same to be unlawfully manufactured, refined or stored;

and may then summon in writing the officer in charge of the Police-station within whose jurisdiction the house, boat or place to be searched is situate to attend him;

Power to enter and search.

and may then, after sunrise and before sunset (but always in the presence of an officer of Police not inferior in rank to a head constable), enter and search any house, boat or place in which there is reason to believe that salt or saltpetre is being so manufactured, refined or stored;

and, in case of resistance, may break open any door, and force and remove any other obstacle to such entry;

and may seize and carry away all salt and saltpetre so manufactured, refined or stored, and all materials used in the manufacture or refinement of such salt or saltpetre;

and may also detain and search and, if he thinks proper, arrest the occupier of the said house, boat or place, together with all persons concerned in the manufacture, refinement, or storing of such salt or saltpetre, or in the concealing thereof.

If the place so entered is an apartment in the actual occupancy of a woman who, according to the custom of the country, does not appear in public, the officer

officer entering the same shall be guided by the rules prescribed for such cases in the Code of Criminal Procedure.

Before conducting a search under this section, the officer conducting it shall call upon two or more respectable inhabitants (if any) of the locality in which the house, boat or place is situate to attend and witness the search, and the search shall be made in the presence of such inhabitants (if any), and also (if practicable) of the occupant of the house, boat or place searched.

Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman with strict regard to decency.

Failure of Police-officer to attend.

19. Any officer in charge of a Police-station who, on application in writing made by a Salt-revenue officer to attend for any of the purposes specified in section eighteen, refuses or fails within a reasonable time so to attend or to depute a subordinate officer, not inferior in rank to a head constable, so to attend, shall for every such offence be punished with fine which may extend to five hundred rupees.

Report of arrest, seizure and search.

20. Whenever a Salt-revenue officer under the rank of Assistant Commissioner arrests under this Act any person,

or seizes any article as liable to confiscation under this Act,

or enters any house, boat or place for the purpose of searching for any such article,

he shall (unless generally empowered by the Assistant Commissioner to send the person arrested to the Magistrate) within forty-eight hours next after such arrest, seizure or entry make a full report of all the particulars of such arrest, seizure or entry to his official superior for the information of the Assistant Commissioner.

Every officer making any arrest under this Act, or his official superior, shall, if generally empowered in this behalf by the Assistant Commissioner, either send with all convenient despatch the person arrested

arrested to the Magistrate having jurisdiction to deal with the case, or order the discharge of such person.

Every officer of Police attending any search made under section eighteen shall report the same to his official superior.

Procedure in respect of articles seized.

21. Whenever the Assistant Commissioner is informed of the seizure of any article exceeding five sers in weight as liable to confiscation under this Act, he shall, with all convenient despatch, report the circumstances of the case to the Commissioner of the Division in which such seizure is made, who may thereupon proceed under section twelve.

If the article seized does not exceed five sers in weight, such Assistant Commissioner may dispose of the case himself under the said section.

Procedure on detention of article subject to additional duty.

22. Any article in respect of which a penalty is imposed under section thirteen may be detained depending the receipt of the order of the Commissioner of the Division or the Assistant Commissioner, as the case may be, on the report required by the same section :

Provided that, if the owner of any article so detained deposits the amount of such penalty with, and pays all ordinary duty and charges payable on such article to, the Salt-revenue officer detaining the same, such article shall be at once released.

When an article is so detained it shall on the receipt of the said order be dealt with in accordance with the rules made in this behalf hereunder.

When an article has been released under the second paragraph of this section, and the Commissioner of the Division or Assistant Commissioner, as the case may be, reduces, or declines to sanction, the penalty imposed in respect of such article, the amount refundable to the owner shall be paid to him on his applying therefor to the Assistant Commissioner within six months, to be computed (where the order has been made by the Commissioner of the Division) from the day on which the Assistant Commissioner has

has received such order, and (where the order has been made by the Assistant Commissioner) from the date of such order.

When any penalty the amount of which has been deposited under the second clause of this section is sanctioned,

or when any sum refundable under this section has not been claimed within the said period of six months,

the amount so in deposit, or the sum so refundable, shall be forfeited to Her Majesty, unless the Commissioner of Northern India Salt-revenue otherwise directs.

Procedure in respect of person arrested.

23. Whenever the Assistant Commissioner is informed of the arrest of any person, he shall (unless such person has been dealt with under the penultimate paragraph of section twenty) either send with all convenient despatch the person arrested to the Magistrate having jurisdiction to deal with the case, or order the immediate discharge of such person.

Officers required to assist Salt-revenue officers.

24. All officers of Police, and all officers of Government engaged in the collection of land-revenue, are hereby empowered and required to assist the Salt-revenue officers in the execution of this Act.

Vexatious search, seizure, &c., by Salt-revenue officer.

25. Any Salt-revenue officer who—

(*a*) without reasonable ground of suspicion searches or causes to be searched any house, boat or place;

(*b*) vexatiously and unnecessarily detains, searches or arrests any person;

(*c*) vexatiously and unnecessarily seizes the moveable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(*d*) commits as such officer any other act to the injury of any person, when such officer has not reason to believe that such act is required for the execution of his duty,

shall for every such offence be punishable, by a Magistrate exercising powers not less than those of a

Magistrate

Magistrate of the second class, with fine which may extend to five hundred rupees.

Any person wilfully and maliciously giving false information and so causing a search to be made under this Act shall be punishable, by a Magistrate exercising the same powers, with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to two years, or with both.

Power to regulate seizures and disposal of things seized.

26. The Governor General in Council may from time to time make rules consistent with this Act to regulate the seizure, disposal and destruction of things liable to be seized under this Act.

Such rules may, among other matters, provide—

(*a*) that the owner or person having the charge of any animal seized and detained shall provide from day to day for its keep while detained, and that, if he omits to do so, such animal may be sold by public auction, and the expenses (if any) incurred on account of it defrayed from the proceeds of the sale;

(*b*) that when anything is seized and an order for its release is subsequently passed, and the owner does not, within a period to be fixed by such rules, appear to claim such thing and tender the duty, penalties and charges (if any) due in respect thereof, it may be sold by public auction, and such duty, penalties and charges defrayed from the proceeds of the sale;

(*c*) that the surplus-proceeds of a sale under clause (*a*) or clause (*b*) of this section shall, unless the owner of the thing seized establishes his claim to such proceeds within a period, not less than three months, to be fixed by such rules, be forfeited to Her Majesty.

CHAPTER VI.

MISCELLANEOUS.

Power to prohibit import and transit of salt.

27. The Governor General in Council may, from time to time, by rule, prohibit absolutely, or subject to conditions, the importation of salt into, or the transit of salt over, the said territories or any part thereof.

Except

Except in the case of a prohibition under this section, nothing in this Act shall affect the transit of salt into or from any of the said territories, from or into any other part of British India.

Further matters for which Governor General in Council may make rules.

28. In addition to the rules which the Governor General in Council is hereinbefore empowered to make, he may from time to time make rules consistent with this Act to regulate the following matters, namely:—

(*a*) the persons by whom, and the time, place and manner at or in which, anything to be done under this Act shall be done;

(*b*) the cases in which and the officers to whom, and the conditions subject to which, orders given by Salt-revenue officers under this Act shall be appealable;

(*c*) the fee to be charged on account of any license, pass, certificate, dákhilá, rawána or other such document issued under this Act;

and generally to carry out the provisions herein contained.

Publication of rules.

29. All rules made under this Act shall be published in the *Gazette of India*, and shall thereupon have the force of law.

Power to confer powers of Assistant Commissioner and Salt-revenue officers.

30. Subject to the provisions herein contained, and to any rules for the time being in force made by the Governor General in Council, the Local Government or the Commissioner of Northern India Salt-revenue may invest any person with the powers of an Assistant Commissioner under this Act, or with all or any of the powers hereinbefore conferred on Salt-revenue officers.

Amendment of Madras Act VI of 1871.

31. For section 11 of the Madras Salt Excise Act, 1871, the following shall be substituted:—

Levy of duty on salt.

"11. The excise-duty on salt manufactured in any district, or part of a district, to which this Act may be extended, shall be paid under such orders as the Board of Revenue from time to time makes in this behalf; but no such duty shall be leviable until the salt is about to be removed from the place of storage,

storage, and no salt shall be so removed without a permit authorizing its removal from store, and such permit shall specify the quantity to be removed and the excise-duty levied or due thereon."

SCHEDULE.

(See section 2.)

ENACTMENTS REPEALED.

ACTS OF THE GOVERNOR GENERAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VIII of 1875 ...	The Inland Customs Act, 1875.	The whole.
II of 1876 ...	The Burma Land and Revenue Act, 1876.	Section 39, clause (*b*), and in clause (*c*) of the same section the words and letter "under clause (*b*)."
XVIII of 1877 ...	The Salt Act, 1877	The whole.

REGULATION.

Number and year.	Short title.	Extent of repeal.
III of 1877 ...	The Ajmír Laws Regulation, 1877.	Sections 36 and 37.

ACT OF THE LIEUTENANT-GOVERNOR OF BENGAL IN COUNCIL.

Number and year.	Short title.	Extent of repeal.
VII of 1864	The Salt Act, 1864	Section nine.

Government Central Press.—No. 796 L. D.—18-3-82.—3,600.

ACT No. XIII OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 10th March, 1882.)

An Act to amend the law relating to Kánúngos and Patwáris in the North-Western Provinces and Oudh.

WHEREAS it is expedient to amend, in manner hereinafter appearing, the law relating to Kánúngos and Patwáris in the North-Western Provinces; It is hereby enacted as follows:— Preamble.

1. This Act may be called "The Kánúngos and Patwáris Act, 1882"; and shall come into force at once. Short title. Commencement.

2. Sections 29, 30 and 31 of the North-Western Provinces Land-Revenue Act, 1873, and sections 4 and 5 of the North-Western Provinces Land-Revenue Act, 1879, are hereby repealed. Repeal of sections of Act No. XIX of 1873 and Act No. VIII of 1879.

Notwithstanding such repeal any landlord may recover from a tenant any rate, or any portion of a rate, accruing due before the thirtieth day of June, 1882, and which he is entitled to recover, under any rule made under section 29 of the said North-Western Provinces Land-Revenue Act, 1873, from such tenant.

3. The existing balance of the provincial fund constituted by section 29 of the said North-Western Provinces Land-Revenue Act, 1873, shall be disposed of in such manner as the Local Government, with the previous sanction of the Governor General in Council, may from time to time direct. Disposal of balance of provincial fund constituted by Act No. XIX of 1873.

4. For the purpose of preparing the registers or accounts prescribed by the said North-Western Provinces Land-Revenue Act, 1873, or by any rule made thereunder, Information to be furnished by owner or occupier of land.

[*Price one anna and six pies.*]

thereunder, every owner or occupier of land in any patwárí's circle, and the agent of every such owner or occupier, shall furnish to the patwárí of such circle, the kánúngo or such person as the Collector of the district may appoint in this behalf, such information, at such times, as the Local Government may from time to time by rule prescribe.

Explanation.—"Owner" in this section includes also a superior and an inferior proprietor, and a lessee, mortgagee or conditional vendee, in possession.

And whereas it is also expedient to amend the law relating to Kánúngos and Patwáris in Oudh; It is hereby further enacted as follows:—

Repeal of sections 203 to 215 (both inclusive) of Act No. XVII of 1876.

5. Sections 203 to 215 (both inclusive) of the Oudh Land-Revenue Act, 1876, are hereby repealed; but all appointments and rules made under any of the said sections and now in force shall, so far as they are consistent herewith, be deemed to have been made hereunder.

Power to fix number and limits of patwáris' circles.

6. With the previous sanction of the Chief Commissioner, the Deputy Commissioner shall fix the number of patwáris' circles in his district and the respective limits of such circles, and may, with the like sanction, from time to time alter the number and limits so fixed.

Patwárí to be appointed for each circle.

For each such circle the Deputy Commissioner shall appoint a patwárí.

Power to make rules for selection, &c., of patwáris.

7. The Chief Commissioner may, from time to time, make rules consistent with this Act—

(*a*) regulating the selection, appointment, suspension, dismissal, duties and supervision of patwáris;

(*b*) prescribing the fines which may be imposed on patwáris, and on persons appointed temporarily to perform their duties, for neglect of their duty.

Kánúngos and patwáris to be public servants, and their records public records.

8. Every kánúngo and patwárí, and every person appointed temporarily to perform the duties of any such officer, shall be deemed to be a public servant within the meaning of the Indian Penal Code,

and

and all official records and papers kept by any such officer or person shall be deemed to be public records and the property of Government.

Information to be furnished by owner or occupier of land.

9. For the purpose of preparing the registers or accounts prescribed by the said Oudh Land-Revenue Act, 1876, or by any rule made thereunder, every owner or occupier of land in any patwárí's circle, and the agent of every such owner or occupier, shall furnish to the patwárí of such circle, the kánúngo or such person as the Deputy Commissioner may appoint in this behalf, such information, at such times, as the Chief Commissioner may from time to time by rule prescribe.

Explanation.—"Owner" in this section includes also a superior and an inferior proprietor, and a lessee, mortgagee or conditional vendee, in possession.

Suits for recovery of patwárí-cess barred.

10. No suit shall be brought by a landlord against a tenant for the recovery of any cess or rate accruing due after the thirtieth day of June, 1882, and payable, in money or in kind, by such tenant on account of the remuneration of a patwárí.

Local extent.

11. Sections one and ten and this section extend to the territories respectively administered by the Lieutenant-Governor of the North-Western Provinces and the Chief Commissioner of Oudh. Sections two, three and four extend to the territories administered by the said Lieutenant-Governor, and sections five to nine (both inclusive) extend to the territories administered by the said Chief Commissioner.

Government Central Press.—No. 797 L. D.—15-3-82.—3,000.

THE CODE OF CIVIL PROCEDURE.

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[*Price three rupees.*]

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THE FIRST SCHEDULE.—Acts repealed.

THE SECOND SCHEDULE.—Chapters and sections of this Code extending to Provincial Courts of Small Causes.

THE THIRD SCHEDULE.—Bombay Enactments.

THE FOURTH SCHEDULE.—Forms of Pleadings and Decrees.

ACT No. XIV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

XIV of

(Received the assent of the Governor General on the 17th March, 1882.)

An Act to consolidate and amend the laws relating to the Procedure of the Courts of Civil Judicature.

WHEREAS it is expedient to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature; It is hereby enacted as follows:— Preamble.

PRELIMINARY.

1. This Act may be cited as "The Code of Civil Procedure:" Short title.

and it shall come into force on the first day of June, 1882. Commencement.

This section and section 3 extend to the whole of British India. The other sections extend to the whole of British India except the Scheduled Districts as defined in Act No. XIV of 1874. Local extent.

2. In this Act, unless there be something repugnant in the subject or context— Interpretation-clause.

"chapter" means a chapter of this Code: "chapter:"

"district" means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a "District Court"), and includes the local limits of the ordinary original civil jurisdiction of a High Court: every Court of a grade inferior to that of a District Court and every Court of Small Causes shall, for the purposes of this Code, be deemed to be subordinate to the High Court and the District Court: "district:" "District Court:"

"pleader"

"pleader:" "pleader" means every person entitled to appear and plead for another in Court, and includes an advocate, a vakíl and an attorney of a High Court:

"Government Pleader:" "Government Pleader" includes also any officer appointed by the Local Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader:

"Collector:" "Collector" means every officer performing the duties of a Collector of land-revenue:

"decree:" "decree" means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court when such adjudication, so far as regards the Court expressing it, decides the suit or appeal. An order rejecting a plaint, or directing accounts to be taken, or determining any question mentioned or referred to in section 244, but not specified in section 588, is within this definition: an order specified in section 588 is not within this definition:

"order:" "order" means the formal expression of any decision of a Civil Court which is not a decree as above defined:

"judgment:" "judgment" means the statement given by the Judge of the grounds of a decree or order:

"Judge:" "Judge" means the presiding officer of a Court:

"judgment-debtor:" "judgment-debtor" means any person against whom a decree or order has been made:

"decree-holder:" "decree-holder" means any person in whose favour a decree or any order capable of execution has been made, and includes any person to whom such decree or order is transferred:

"written:" "written" includes printed and lithographed, and "writing" includes print and lithograph:

"signed:" "signed" includes marked, when the person making the mark is unable to write his name; it also includes stamped with the name of the person referred to:

"foreign Court:" "foreign Court" means a Court situate beyond the limits of British India and not having authority in

in British India nor established by the Governor General in Council:

"foreign judgment" means the judgment of a foreign Court: "foreign judgment:

"public officer" means a person falling under any of the following descriptions (namely):— "public officer:"

every Judge;

every covenanted servant of Her Majesty;

every commissioned officer in the military or naval forces of Her Majesty while serving under Government;

every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorized by a Court of Justice to perform any of such duties;

every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

every officer of Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of Government, or to make any survey, assessment or contract on behalf of Government, or to execute any revenue-process, or to investigate, or to report on, any matter affecting the pecuniary interests of Government, or to make, authenticate or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty.

And

"Government."

And in any part of British India in which this Code operates, "Government" includes the Government of India as well as the Local Government.

Enactments repealed.

3. The enactments specified in the first schedule hereto annexed are hereby repealed to the extent mentioned in the third column thereof. But all notifications published, declarations and rules made, places appointed, agreements filed, scales prescribed and forms framed under any such enactment, shall, so far as they are consistent with this Code, be deemed to be respectively published, made, appointed, filed, prescribed and framed hereunder.

References in previous Acts.

And when in any Act, Regulation or notification passed or issued prior to the day on which this Code comes into force, reference is made to Act No. VIII of 1859, Act No. XXIII of 1861, or the "Code of Civil Procedure," or to Act No. X of 1877, or to any other Act hereby repealed, such reference shall, so far as may be practicable, be read as applying to this Code or the corresponding part thereof.

Saving of procedure in suits instituted before 1st June, 1882.

Save as provided by section 99A, nothing herein contained shall affect any proceedings prior to decree in any suit instituted or appeal presented before the first day of June, 1882, or any proceedings after decree that may have been commenced and were still pending at that date.

Appeals pending on 29th July, 1879.

Every appeal pending on the twenty-ninth day of July, 1879, which would have lain if this Code had been in force on the date of its presentation, shall be heard and determined as if this Code had been in force on such date; and every order passed before the same day, purporting to transfer a case to a Collector under Act No. X of 1877, section 320, and every notification published before the same day, purporting to be issued under Act No. X of 1877, section 360, shall be deemed to have been respectively passed and issued in accordance with law.

Saving of certain Acts affecting Central Provinces, Burma, Panjáb and Oudh.

4. Save as provided in the second paragraph of section 3, nothing herein contained shall be deemed to affect the following enactments (namely) :—

The Central Provinces Courts Act, 1865 :

The

The Burma Courts Act, 1875:

The Panjáb Courts Act, 1877:

The Oudh Civil Courts Act, 1879:

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, prescribing a special procedure for suits between landholders and their tenants or agents,

or any law heretofore or hereafter passed under the Indian Councils Act, 1861, by a Governor or a Lieutenant-Governor in Council, providing for the partition of immoveable property.

And where under any of the said Acts concurrent civil jurisdiction is given to the Commissioner and the Deputy Commissioner, the Local Government may declare which of such officers shall, for the purposes of this Code, be deemed to be the District Court.

Sections extending to Provincial Small Cause Courts.

5. The chapters and sections of this Code specified in the second schedule hereto annexed extend (so far as they are applicable) to Courts of Small Causes constituted under Act No. XI of 1865, and to all other Courts (other than the Courts of Small Causes in the towns of Calcutta, Madras and Bombay) exercising the jurisdiction of a Court of Small Causes. The other chapters and sections of this Code do not extend to such Courts.

Saving of jurisdiction and procedure—

6. Nothing in this Code affects the jurisdiction or procedure—

(*a*) of Military Courts of Request;

(*a*) of Military Courts of Request;

(*b*) of a single officer duly appointed in the Presidency of Bombay to try small suits in military bázárs at cantonments and stations occupied by the troops of that Presidency;

(*b*) of officers appointed to try small suits in Bombay;

(*c*) of Village Munsifs or Village Pancháyats under the provisions of the Madras Code; or

(*c*) of Village Munsifs and Village Pancháyats in Madras;

(*d*) of

(*d*) of Recorder of Rangoon sitting as Insolvent Court.

(*d*) of the Recorder of Rangoon sitting as an Insolvent Court in Rangoon, Maulmain, Akyab or Bassein;

or shall operate to give any Court jurisdiction over suits of which the amount or value of the subject-matter exceeds the pecuniary limits (if any) of its ordinary jurisdiction.

Saving of certain Bombay laws.

7. With respect to

(*a*) the jurisdiction exercised by certain jágírdárs and other authorities invested with powers under the provisions of Bombay Regulation XIII of 1830 and Act No. XV of 1840 in the cases therein mentioned, and

(*b*) cases of the nature defined in the enactments specified in the third schedule hereto annexed,

the procedure in such cases and in the appeals to the Civil Courts allowed therein, shall be according to the rules laid down in this Code, except where those rules are inconsistent with any specific provisions contained in the enactments mentioned or referred to in this section.

Presidency Small Cause Courts.

8. Save as provided in sections 3, 25, 86, 223, 225, 386, and chapter XXXIX, this Code shall not extend to any suit or proceeding in any Court of Small Causes established in the towns of Calcutta, Madras and Bombay.

But the Local Government may, by notification published in the official Gazette, extend to any such Court this Code or any part thereof, except so far as relates to appeals and reviews of judgment.

Division of Code.

9. This Code is divided into ten Parts as follows:—

The first Part:	Suits in general.
The second Part:	Incidental Proceedings.
The third Part:	Suits in particular cases.
The fourth Part:	Provisional Remedies.
The fifth Part:	Special Proceedings.
The sixth Part:	Appeals.
The seventh Part:	Reference to and Revision by the High Court.
The eighth Part:	Review of Judgment.

The

The ninth Part: Special Rules relating to the Chartered High Courts.

The tenth Part: Certain Miscellaneous Matters.

PART I.

OF SUITS IN GENERAL.

CHAPTER I.

OF THE JURISDICTION OF THE COURTS AND *Res Judicata.*

10. No person shall, by reason of his descent or place of birth, be in any civil proceeding exempted from the jurisdiction of any of the Courts.

No person exempt from jurisdiction by reason of descent or place of birth.

11. The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is barred by any enactment for the time being in force.

Courts to try all civil suits unless specially barred.

Explanation.—A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.

12. Except where a suit has been stayed under section 20, the Court shall not try any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit for the same relief between the same parties, or between parties under whom they or any of them claim, pending in the same or any other Court, whether superior or inferior, in British India having jurisdiction to grant such relief, or in any Court beyond the limits of British India established by the Governor General in Council and having like jurisdiction, or before Her Majesty in Council.

Pending suits.

Explanation.—The pendency of a suit in a foreign Court does not preclude the Courts in British India from

from trying a suit founded on the same cause of action.

Res judicata.

13. No Court shall try any suit or issue in which the matter directly and substantially in issue

has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court of jurisdiction competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and

has been heard and finally decided by such Court.

Explanation I.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation II.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation III.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purpose of this section, be deemed to have been refused.

Explanation IV.—A decision is final within the meaning of this section when it is such as the Court making it could not alter (except on review) on the application of either party or reconsider of its own motion. A decision liable to appeal may be final within the meaning of this section until the appeal is made.

Explanation V.—Where persons litigate *bonâ fide* in respect of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purpose of this section, be deemed to claim under the persons so litigating.

Explanation VI.—Where a foreign judgment is relied on, the production of the judgment duly authenticated is presumptive evidence that the Court which made it had competent jurisdiction, unless the contrary

contrary appear on the record; but such presumption may be removed by proving the want of jurisdiction.

When foreign judgment no bar to suit in British India.

14. No foreign judgment shall operate as a bar to a suit in British India—

(*a*) if it has not been given on the merits of the case:

(*b*) if it appears on the face of the proceedings to be founded on an incorrect view of international law or of any law in force in British India:

(*c*) if it is in the opinion of the Court before which it is produced contrary to natural justice:

(*d*) if it has been obtained by fraud:

(*e*) if it sustains a claim founded on a breach of any law in force in British India.

CHAPTER II.

Of the Place of Suing.

Court in which suit to be instituted.

15. Every suit shall be instituted in the Court of the lowest grade competent to try it.

Suits to be instituted where subject-matter situate.

16. Subject to the pecuniary or other limitations prescribed by any law, suits

(*a*) for the recovery of immoveable property,

(*b*) for the partition of immoveable property,

(*c*) for the foreclosure or redemption of a mortgage of immoveable property,

(*d*) for the determination of any other right to or interest in immoveable property,

(*e*) for compensation for wrong to immoveable property,

(*f*) for the recovery of moveable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that suits to obtain relief respecting, or compensation for wrong to, immoveable property held by or on behalf of the defendant may, when the relief sought

sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the Court within the local limits of whose jurisdiction he actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation.—In this section "property" means property situate in British India.

Suits to be instituted where defendants reside or cause of action arose.

17. Subject to the limitations aforesaid, all other suits shall be instituted in a Court within the local limits of whose jurisdiction—

(*a*) the cause of action arises, or

(*b*) all the defendants, at the time of the commencement of the suit, actually and voluntarily reside, or carry on business, or personally work for gain; or

(*c*) any of the defendants, at the time of the commencement of the suit, actually and voluntarily resides, or carries on business, or personally works for gain: provided that either the leave of the Court is given, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation II.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Illustrations.

(*a*) A is a tradesman in Calcutta. B carries on business in Delhi. B, by his agent in Calcutta, buys goods of A, and requests A to deliver them to the East Indian Railway Company. A delivers the goods accordingly in Calcutta. A may sue B for the price of the goods either in Calcutta, where the cause

cause of action has arisen, or in Delhi, where B carries on business.

(*b*) A resides at Simla, B at Calcutta, and C at Delhi. A, B and C being together at Benares, B and C make a joint promissory-note payable on demand, and deliver it to A. A may sue B and C at Benares, where the cause of action arose. He may also sue them at Calcutta, where B resides, or at Delhi, where C resides; but in each of these cases, if the non-resident defendant objects, the suit cannot be maintained without the leave of the Court.

Suits for compensation for wrongs to person or moveables.

18. In suits for compensation for wrong done to person or moveable property, if the wrong was done within the local limits of the jurisdiction of one Court and the defendant resides, or carries on business, or personally works for gain, within the local limits of the jurisdiction of another Court, the plaintiff may at his option sue in either of the said Courts.

Illustrations.

(*a*) A, residing in Delhi, beats B in Calcutta. B may sue A either in Calcutta or in Delhi.

(*b*) A, residing in Delhi, publishes in Calcutta statements defamatory of B. B may sue A either in Calcutta or in Delhi.

(*c*) A, travelling on the line of a Railway Company whose principal office is at Howrah, is upset and injured at Allahabad by negligence imputable to the Company. He may sue the Company either at Howrah or at Allahabad.

Suits for immoveable property situate in single district, but within jurisdictions of different Courts.

19. If the suit be to obtain relief respecting, or compensation for wrong to, immoveable property situate within the limits of a single district, but within the jurisdiction of different Courts, the suit may be instituted in the Court within whose jurisdiction any portion of the property is situate; provided that, in respect of the value of the subject-matter of the suit, the entire claim be cognizable by such Court.

Suits for immoveable property situate in different districts.

If the immoveable property be situate within the limits of different districts, the suit may be instituted in any Court, otherwise competent to try it, within whose jurisdiction any portion of the property is situate.

Power to

20. If a suit which may be instituted in more than

stay proceedings where all defendants do not reside within jurisdiction.

than one Court is instituted in a Court within the local limits of whose jurisdiction the defendant or all the defendants does not or do not actually and voluntarily reside, or carry on business, or personally work for gain, the defendant or any defendant may, after giving notice in writing to the other parties of his intention to apply to the Court to stay proceedings, apply to the Court accordingly;

and if the Court, after hearing such of the parties as desire to be heard, is satisfied that justice is more likely to be done by the suit being instituted in some other Court, it may stay proceedings either finally or till further order, and make such order as it thinks fit as to the costs already incurred by the parties or any of them.

In such case, if the plaintiff so requires, the Court shall return the plaint with an endorsement thereon of the order staying proceedings.

Application when to be made.

Every such application shall be made at the earliest possible opportunity, and in all cases before the issues are settled; and any defendant not so applying shall be deemed to have acquiesced in the institution of the suit.

Remission of court-fee where suit instituted in another Court.

21. Where the Court, under section 20, stays proceedings, and the plaintiff re-institutes his suit in another Court, the plaint shall not be chargeable with any court-fee; provided that the proper fee has been levied on the institution of the suit in the former Court, and that the plaint has been returned by such Court.

Procedure where Courts in which suit may be instituted subordinate to same appellate Court.

22. Where a suit may be instituted in more Courts than one, and such Courts are subordinate to the same appellate Court, any defendant, after giving notice in writing to the other parties of his intention to apply to such Court to transfer the suit to another Court, may apply accordingly; and the appellate Court, after hearing the other parties, if they desire to be heard, shall determine in which of the Courts having jurisdiction the suit shall proceed.

Procedure

23. Where such Courts are subordinate to different

ent appellate Courts, but are subordinate to the same High Court, any defendant, after giving notice in writing to the other parties of his intention to apply to the High Court to transfer the suit to another Court having jurisdiction, may apply accordingly. If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate. The High Court may, after considering the objections, if any, of the other parties, determine in which of the Courts having jurisdiction the suit shall proceed.

where they are not so subordinate.

24. Where such Courts are subordinate to different High Courts, any defendant may, after giving notice in writing to the other parties of his intention to apply to the High Court within whose jurisdiction the Court in which the suit is brought is situate, apply accordingly.

Procedure where they are subordinate to different High Courts.

If the suit is brought in any Court subordinate to a District Court, the application, together with the objections, if any, filed by the other parties, shall be submitted through the District Court to which such Court is subordinate;

and such High Court shall, after considering the objections, if any, of the other parties, determine in which of the several Courts having jurisdiction the suit shall proceed.

25. The High Court, or District Court may, on the application of any of the parties, after giving notice to the parties and hearing such of them as desire to be heard, or of its own motion without giving such notice, withdraw any suit, whether pending in a Court of first instance or in a Court of appeal subordinate to such High Court or District Court, as the case may be, and try the suit itself, or transfer it for trial to any other such subordinate Court competent to try the same in respect of its nature and the amount or value of its subject-matter.

Transfer of suits.

For the purposes of this section, the Courts of Additional

Additional and Assistant Judges shall be deemed to be subordinate to the District Court.

The Court trying any suit withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

CHAPTER III.

OF PARTIES AND THEIR APPEARANCES, APPLICATIONS AND ACTS.

Persons who may be joined as plaintiffs.

26. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally or in the alternative, in respect of the same cause of action. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who is not found entitled to relief, unless the Court in disposing of the costs of the suit otherwise directs.

Court may substitute or add plaintiff for or to plaintiff suing.

27. Where a suit has been instituted in the name of the wrong person as plaintiff, or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may, if satisfied that the suit has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person or persons to be substituted or added as plaintiff or plaintiffs upon such terms as the Court thinks just.

Persons who may be joined as defendants.

28. All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally or in the alternative, in respect of the same matter. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

29. The

29. The plaintiff may, at his option, join as parties to the same suit all or any of the persons severally, or jointly and severally, liable on any one contract, including parties to bills of exchange, hundís and promissory notes.

Joinder of parties liable on same contract.

30. Where there are numerous parties having the same interest in one suit, one or more of such parties may, with the permission of the Court, sue or be sued, or may defend, in such suit, on behalf of all parties so interested. But the Court shall in such case give, at the plaintiff's expense, notice of the institution of the suit to all such parties either by personal service or (if from the number of parties or any other cause such service is not reasonably practicable) by public advertisement, as the Court in each case may direct.

One party may sue or defend on behalf of all in same interest.

31. No suit shall be defeated by reason of the misjoinder of parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it.

Suit not to fail by reason of misjoinder.

Nothing in this section shall be deemed to enable plaintiffs to join in respect of distinct causes of action.

32. The Court may, on or before the first hearing, upon the application of either party, and on such terms as the Court thinks just, order that the name of any party, whether as plaintiff or as defendant, improperly joined, be struck out;

Court may dismiss or add parties.

and the Court may at any time either upon or without such application, and on such terms as the Court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

No person shall be added as a plaintiff, or as the next

Consent of

person added as plaintiff or next friend.

next friend of a plaintiff, without his own consent thereto.

Parties to suits instituted or defended under section 30.

Any person on whose behalf a suit is instituted or defended under section 30 may apply to the Court to be made a party to such suit.

Defendants added to be served.

All parties whose names are so added as defendants shall be served with a summons in manner hereinafter mentioned, and (subject to the provisions of the Indian Limitation Act, 1877, section 22) the proceedings as against them shall be deemed to have begun only on the service of such summons.

Conduct of suit.

The Court may give the conduct of the suit to such plaintiff as it deems proper.

Where defendant added, plaintiff to amend.

33. Where a defendant is added, the plaint, if previously filed, shall, unless the Court direct otherwise, be amended in such manner as may be necessary, and an amended copy of the summons shall be served on the new defendant and the original defendants.

Time for taking objections as to non-joinder or misjoinder.

34. All objections for want of parties, or for joinder of parties who have no interest in the suit, or for misjoinder as co-plaintiffs or co-defendants, shall be taken at the earliest possible opportunity, and in all cases before the first hearing; and any such objection not so taken shall be deemed to have been waived by the defendant.

Each of several plaintiffs or defendants may authorise any other to appear, &c., for him.

35. When there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding under this Code: and in like manner when there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any such proceeding.

Authority to be in writing, signed and filed.

The authority shall be in writing signed by the party giving it, and shall be filed in Court.

Recognized Agents and Pleaders.

Appearances, &c., may be in person, by

36. Any appearance, application or act in or to any Court, required or authorized by law to be made or

or done by a party to a suit or appeal in such Court, may, except when otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf:

recognized agent or by pleader.

Provided that any such appearance shall be made by the party in person, if the Court so direct.

37. The recognized agents of parties by whom such appearances, applications and acts may be made or done are—

Recognized agents.

(*a*) persons holding general powers-of-attorney from parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

Persons holding powers-of-attorney from parties out of jurisdiction.

(*b*) mukhtárs duly certificated under any law for the time being in force, and holding special powers-of-attorney authorizing them to do, on behalf of their principals, such acts as may legally be done by mukhtárs;

Certificated mukhtárs.

(*c*) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts.

Persons carrying on trade or business for parties out of jurisdiction.

Nothing in the former part of this section applies to the territories now administered respectively by the Lieutenant-Governor of the Panjáb, and the Chief Commissioners of Oudh and the Central Provinces; but in those territories the recognized agents of parties by whom such appearances, applications and acts may be made and done shall be such persons as the Local Government may, from time to time, by notification in the official Gazette, declare in this behalf.

Recognized agents in Panjáb, Oudh and Central Provinces.

38. Processes served on the recognized agent of

Service of

a

process on recognized agent.

a party to a suit or appeal shall be as effectual as if the same had been served on the party in person, unless the Court otherwise directs.

The provisions of this Code for the service of process on a party to a suit shall apply to the service of process on his recognized agent.

Appointment of pleader.

39. The appointment of a pleader to make or do any appearance, application or act as aforesaid shall be in writing, and such appointment shall be filed in court.

When so filed, it shall be considered to be in force until revoked with the leave of the Court, by a writing signed by the client and filed in court, or until the client or the pleader dies, or all proceedings in the suit are ended so far as regards the client.

No advocate of any High Court established by Royal Charter shall be required to present any document empowering him to act.

Service of process on pleader.

40. Processes served on the pleader of any party or left at the office or ordinary residence of such pleader, relative to a suit or appeal, and whether the same be for the personal appearance of the party or not, shall be presumed to be duly communicated and made known to the party whom the pleader represents; and, unless the Court otherwise directs, shall be as effectual for all purposes in relation to the suit or appeal as if the same had been given to or served on the party in person.

Agent to receive process.

41. Besides the recognized agents described in section 37, any person residing within the jurisdiction of the Court may be appointed an agent to accept service of process.

His appointment to be in writing and to be filed in court.

Such appointment may be special or general and shall be made by an instrument in writing signed by the principal, and such instrument, or, if the appointment be general, a duly attested copy thereof, shall be filed in court.

CHAPTER IV.

CHAPTER IV.

Of the Frame of the Suit.

42. Every suit shall, as far as practicable, be so framed as to afford ground for a final decision upon the subjects in dispute, and so to prevent further litigation concerning them.

Suit how to be framed.

43. Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action ; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

Suit to include whole claim.

If a plaintiff omit to sue in respect of, or intentionally relinquish, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

Relinquishment of part of claim.

A person entitled to more than one remedy in respect of the same cause of action may sue for all or any of his remedies ; but if he omits (except with the leave of the Court obtained before the first hearing) to sue for any of such remedies, he shall not afterwards sue for the remedy so omitted.

Omission to sue for one of several remedies.

For the purpose of this section, an obligation and a collateral security for its performance shall be deemed to constitute but one cause of action.

Illustration.

A lets a house to B at a yearly rent of Rs. 1,200. The rent for the whole of the years 1881 and 1882 is due and unpaid. A sues B only for the rent due for 1882. A shall not afterwards sue B for the rent due for 1881.

44. *Rule a.*—No cause of action shall, unless with the leave of the Court, be joined with a suit for the recovery of immoveable property, or to obtain a declaration of title to immoveable property, except—

Only certain claims to be joined with suit for recovery of land.

(*a*) claims in respect of mesne profits or arrears of rent in respect of the property claimed,

(*b*) damages for breach of any contract under which the property or any part thereof is held, and

(*c*) claims

(*c*) claims by a mortgagee to enforce any of his remedies under the mortgage.

Claims by or against executor, administrator or heir.

Rule b.—No claim by or against an executor, administrator or heir as such, shall be joined with claims by or against him personally, unless the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor, administrator or heir, or are such as he was entitled to, or liable for, jointly with the deceased person whom he represents.

Plaintiff may join several causes of action.

45. Subject to the rules contained in chapter II and in section 44, the plaintiff may unite in the same suit several causes of action against the same defendant or the same defendants jointly ; and any plaintiffs having causes of action in which they are jointly interested against the same defendant, or the same defendants jointly, may unite such causes of action in the same suit.

Court may order desepa-ration.

But if it appear to the Court that any such causes of action cannot be conveniently tried or disposed of together, the Court may, at any time before the first hearing, of its own motion or on the application of any defendant, or at any subsequent stage of the suit, if the parties agree, order separate trials of any such causes of action to be had, or make such other order as may be necessary or expedient for the separate disposal thereof.

When causes of action are united, the jurisdiction of the Court as regards the suit shall depend on the amount or value of the aggregate subject-matters at the date of instituting the suit, whether or not an order has been made under the second paragraph of this section.

Defendant may apply to confine suit.

46. Any defendant alleging that the plaintiff has united in the same suit several causes of action which cannot be conveniently disposed of in one suit may at any time before the first hearing, or, where issues are settled, before any evidence is recorded, apply to the Court for an order confining the suit to such of the causes

causes of action as may be conveniently disposed of in one suit.

Court on hearing application may exclude some causes and order amendment.

47. If, on the hearing of such application, it appears to the Court that the causes of action are such as cannot all be conveniently disposed of in one suit, the Court may order any of such causes of action to be excluded, and may direct the plaint to be amended accordingly, and may make such order as to costs as may be just.

Every amendment made under this section shall be attested by the signature of the Judge.

CHAPTER V.

Of the Institution of Suits.

Suits to be commenced by plaint.

48. Every suit shall be instituted by presenting a plaint to the Court or such officer as it appoints in this behalf.

Language of plaint.

49. The plaint must be distinctly written in the language of the Court; provided that, if such language is not English, the plaint may (with the permission of the Court) be written in English; but in such case, if the defendant so require, a translation of the plaint into the language of the Court shall be filed in court.

Particulars to be contained in plaint.

50. The plaint must contain the following particulars:—

(*a*) the name of the Court in which the suit is brought;

(*b*) the name, description and place of residence of the plaintiff;

(*c*) the name, description and place of residence of the defendant, so far as they can be ascertained;

(*d*) a plain and concise statement of the circumstances constituting the cause of action, and where and when it arose;

(*e*) a demand of the relief which the plaintiff claims; and

(*f*) if

(*f*) if the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished.

In money-suits.

If the plaintiff seeks the recovery of money, the plaint must state the precise amount, so far as the case admits.

In a suit for mesne profits, and in a suit for the amount which will be found due to the plaintiff on taking unsettled accounts between him and the defendant, the plaint need only state approximately the amount sued for.

Where plaintiff sues as representative.

When the plaintiff sues in a representative character, the plaint should shew, not only that he has an actual existing interest in the subject-matter but that he has taken the steps necessary to enable him to institute a suit concerning it.

Illustrations.

(*a*) A sues as B's executor. The plaint must state that A has proved B's will.

(*b*) A sues as C's administrator. The plaint must state that A has taken out administration to C's estate.

(*c*) A sues as guardian of D, a Muhammadan minor. A is not D's guardian according to Muhammadan law and usage. The plaint must state that A has been specially appointed D's guardian.

Defendant's interest and liability to be shewn.

The plaint must shew that the defendant is or claims to be interested in the subject-matter, and that he is liable to be called upon to answer the plaintiff's demand.

Illustration.

A dies, leaving B his executor, C his legatee, and D a debtor to A's estate. C sues D to compel him to pay his debt in satisfaction of C's legacy. The plaint must shew that B has causelessly refused to sue D, or that B and D have colluded for the purpose of defrauding C, or other such circumstances rendering D liable to C.

Grounds of exemption from limitation-law.

If the cause of action arose beyond the period ordinarily allowed by any law for instituting the suit, the plaint must shew the ground upon which exemption from such law is claimed.

51. The

51. The plaint shall be signed by the plaintiff and his pleader (if any), and shall be verified at the foot by the plaintiff or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case :

Plaints to be signed and verified.

Provided that if the plaintiff is, by reason of absence or for other good cause, unable to sign the plaint, it may be signed by any person duly authorized by him in this behalf.

52. The verification must be to the effect that the same is true to the knowledge of the person making it, except as to matters stated on information and belief, and that as to those matters he believes it to be true.

Contents of verification.

The verification shall be signed by the person making it.

Verification to be signed and attested.

53. The plaint may, at the discretion of the Court and at or before the first hearing, be rejected, returned for amendment within a time to be fixed by the Court, or amended then and there, upon such terms as to the payment of costs occasioned by the amendment as the Court thinks fit,

When plaint may be rejected, returned for amendment, or amended.

(*a*) if it does not state correctly and without prolixity the several particulars hereinbefore required to be specified therein; or

(*b*) if it contains any particulars other than those so required; or

(*c*) if it is not signed and verified as hereinbefore required; or

(*d*) if it does not disclose a cause of action; or

(*e*) if it is not framed in accordance with section 42; or

(*f*) if it is wrongly framed by reason of nonjoinder or misjoinder of parties, or because the plaintiff has joined causes of action which ought not to be joined in the same suit:

Provided that a plaint cannot be altered so as to convert a suit of one character into a suit of another and inconsistent character.

Proviso.

When

Attestation of amendment.

When a plaint is amended, the amendment shall be attested by the signature of the Judge.

When plaint shall be rejected.

54. The plaint shall be rejected in the following cases:—

(*a*) if the relief sought is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:

(*b*) if the relief sought is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so:

(*c*) if the suit appears from the statement in the plaint to be barred by any positive rule of law:

(*d*) if the plaint, having been returned for amendment within a time fixed by the Court, is not amended within such time.

Procedure on rejecting plaint.

55. When a plaint is rejected, the Judge shall record with his own hand an order to that effect with the reason for such order.

When rejection of plaint does not preclude presentation of fresh plaint.

56. The rejection of the plaint on any of the grounds hereinbefore mentioned shall not of its own force preclude the plaintiff from presenting a fresh plaint in respect of the same cause of action.

When plaint shall be returned to be presented to proper Court.

57. The plaint shall be returned to be presented to the proper Court in the following cases:

(*a*) if a suit has been instituted in a Court whose grade is lower or higher than that of the Court competent to try it, where such Court exists, or where no option as to the selection of the Court is allowed by law:

(*b*) if, in a suit relating to immoveable property, but not coming under the proviso to section 16, it appears that no part of such property is situate within the local limits of the jurisdiction of the Court to which the plaint is presented:

(*c*) if, in any other case, it appears that the cause of

of action did not arise, and that none of the defendants are dwelling or carrying on business, or personally working for gain, within such local limits.

Procedure on returning plaint.

On returning a plaint, the Judge shall, with his own hand, endorse thereon the date of its presentation and return, the name of the party presenting it, and a brief statement of the reason for returning it.

Procedure on admitting plaint.

58. The plaintiff shall endorse on the plaint, or annex thereto, a memorandum of the documents (if any) which he has produced along with it; and, if the plaint be admitted, shall present as many copies on plain paper of the plaint as there are defendants, unless the Court by reason of the length of the plaint or the number of the defendants, or for any other sufficient reason, permits him to present a like number of concise statements of the nature of the claim made, or of the relief or remedy required, in the suit, in which case he shall present such statements.

Concise statements.

If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, such statements shall show in what capacity the plaintiff or defendant sues or is sued.

The plaintiff may, by leave of the Court, amend such statements so as to make them correspond with the plaint.

The chief ministerial officer of the Court shall sign such memorandum and copies or statements if, on examination, he finds them to be correct.

Register of suits.

The Court shall also cause the particulars mentioned in section 50 to be entered in a book to be kept for the purpose and called the Register of civil suits. Such entries shall be numbered in every year according to the order in which the plaint is admitted.

Production of document on which plaintiff sues. Delivery of document or copy.

59. If a plaintiff sues upon a document in his possession or power, he shall produce it in court when the plaint is presented, and shall at the same time deliver the document or a copy thereof to be filed with the plaint.

If

List of other documents.

If he rely on any other documents (whether in his possession or power or not) as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint.

Statement in case of documents not in his possession or power.

60. In the case of any such document not in his possession or power, he shall, if possible, state in whose possession or power it is.

Suits on lost negotiable instruments.

61. In case of any suit founded upon a negotiable instrument, if it be proved that the instrument is lost, and if an indemnity be given by the plaintiff, to the satisfaction of the Court, against the claims of any other person upon such instrument, the Court may make such decree as it would have made if the plaintiff had produced the instrument in court when the plaint was presented, and had at the same time delivered a copy of the instrument to be filed with the plaint.

Production of shop-book.

62. If the document on which the plaintiff sues be an entry in a shop-book or other book in his possession or power, the plaintiff shall produce the book at the time of filing the plaint, together with a copy of the entry on which he relies.

Original entry to be marked and returned.

The Court, or such officer as it appoints in this behalf, shall forthwith mark the document for the purpose of identification; and, after examining and comparing the copy with the original and attesting the copy if found correct, shall return the book to the plaintiff and cause the copy to be filed.

Inadmissibility of document not produced when plaint filed.

63. A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint, and which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

Nothing in this section applies to documents produced for cross-examination of the defendant's witnesses, or in answer to any case set up by the defendant,

ant, or handed to a witness merely to refresh his memory.

CHAPTER VI.

Of the Issue and Service of Summons.

Issue of Summons.

Summons.

64. When the plaint has been registered, and the copies or concise statements required by section 58 have been filed, a summons may be issued to each defendant to appear and answer the claim on a day to be therein specified,

(*a*) in person, or

(*b*) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(*c*) by a pleader accompanied by some other person able to answer all such questions.

Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court:

Provided that no such summons shall be issued when the defendant has appeared at the presentation of the plaint and admitted the plaintiff's claim.

Copy or statement annexed to summons.

65. Every such summons shall be accompanied with one of the copies or concise statements mentioned in section 58.

Court may order defendant or plaintiff to appear in person.

66. If the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

If the Court sees reason to require the personal appearance of the plaintiff on the same day, it may make an order for such appearance.

No party to be ordered to appear in person unless resident

67. No party shall be ordered to appear in person unless he resides

(*a*) within the local limits of the Court's ordinary original jurisdiction, or

(*b*) without

within 50 or, where there is railway,

(*b*) without such limits and at a place less than fifty or, where there is railway-communication for five- sixths of the distance between the place where he resides and the place where the Court is situate, two hundred miles from the court-house.

Summons to be either to settle issues or for final disposal.

68. The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by Courts of Small Causes, the summons shall be for the final disposal of the suit.

Fixing day for appearance of defendant.

69. The day for the appearance of the defendant shall be fixed by the Court with reference to its current business, the place of residence of the defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

What shall be deemed "sufficient time" must be determined with reference to the circumstances of the case.

Summons to order defendant to produce documents required by plaintiff or relied on by defendant.

70. The summons to appear and answer shall order the defendant to produce any document in his possession or power, containing evidence relating to the merits of the plaintiff's case, or upon which the defendant intends to rely in support of his case.

On issue of summons for final disposal, defendant to be directed to produce his witnesses.

71. When the summons is for the final disposal of the suit, it shall direct the defendant to produce, on the day fixed for his appearance, the witnesses upon whose evidence he intends to rely in support of his case.

Service of Summons.

Delivery of summons for service.

72. The summons shall be delivered to the proper officer of the Court, to be served by him or one of his subordinates.

Mode of service.

73. Service of the summons shall be made by delivering

delivering or tendering a copy thereof signed by the Judge or such officer as he appoints in this behalf, and sealed with the seal of the Court.

74. When there are more defendants than one, service of the summons shall be made on each defendant: Service on several defendants.

Provided that, if the defendants are partners, and the suit relates to a partnership-transaction or to an actionable wrong in respect of which relief is claimable from the firm, the service may be made unless the Court directs otherwise either (*a*) on one defendant for himself and for the other defendants, or (*b*) on any person having the management of the business of the partnership at the principal place, within the local limits of the Court's ordinary original civil jurisdiction, of such business.

75. Whenever it may be practicable, the service shall be made on the defendant in person, unless he have an agent empowered to accept the service, in which case service on such agent shall be sufficient. Service to be on defendant in person when practicable, or on his agent.

76. In a suit relating to any business or work against a person who does not reside within the local limits of the jurisdiction of the Court from which the summons issues, service on any manager or agent, who, at the time of service, personally carries on such business or work for such person within such limits, shall be deemed good service. Service on agent by whom defendant carries on business.

For the purpose of this section, the master of a ship is the agent of his owner or charterer.

77. In a suit to obtain relief respecting, or compensation for wrong to, immoveable property, if the service cannot be made on the defendant in person, and the defendant have no agent empowered to accept the service, it may be made on any agent of the defendant in charge of the property. Service on agent in charge, in suits for immoveable property.

78. If in any suit the defendant cannot be found and if he have no agent empowered to accept the service of the summons on his behalf, the service may be made on any adult male member of the family of the defendant who is residing with him. When service may be on male member of defendant's family.

Explanation.

Explanation.—A servant is not a member of the family within the meaning of this section.

Person served to sign acknowledgment.

79. When the serving-officer delivers or tenders a copy of the summons to the defendant personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original summons.

Procedure when defendant refuses to accept service, or cannot be found.

80. If the defendant or other person refuses to sign the acknowledgment,

or if the serving-officer cannot find the defendant, and there is no agent empowered to accept the service of the summons on his behalf, nor any other person on whom the service can be made,

the serving officer shall affix a copy of the summons on the outer door of the house in which the defendant ordinarily resides and then return the original to the Court from which it issued, with a return endorsed thereon or annexed thereto, stating that he has so affixed the copy and the circumstances under which he did so.

Endorsement of time and manner of service.

81. The serving-officer shall, in all cases in which the summons has been served under section 79, endorse or annex, or cause to be endorsed or annexed, on or to the original summons, a return stating the time when and the manner in which the summons were served.

Examination of serving-officer.

82. When a summons is returned under section 80, the Court shall examine the serving-officer on oath touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit.

Substituted service.

Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding the service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the court-house, and also upon some conspicuous

conspicuous part of the house, if any, in which the defendant is known to have last resided, or in such other manner as the Court thinks fit.

Effect of substituted service.

83. The service substituted by order of the Court shall be as effectual as if it had been made on the defendant personally.

When service substituted, time for appearance to be fixed.

84. Whenever service is substituted by order of the Court, the Court shall fix such time for the appearance of the defendant as the case may require.

Service of summons when defendant resides within jurisdiction of another Court and has no agent to accept service.

85. If the defendant resides within the jurisdiction of any Court other than the Court in which the suit is instituted, and has no agent resident within the local limits of the jurisdiction of the latter Court empowered to accept the service of the summons, such Court shall send the summons, either by one of its officers or by post, to any Court, not being a High Court, having jurisdiction at the place where the defendant resides, by which it can be conveniently served, and shall fix such time for the appearance of the defendant as the case may require.

The Court to which the summons is sent shall, upon receipt thereof, proceed as if it had been issued by such Court, and shall then return the summons to the Court from which it originally issued, together with the record (if any) made under this paragraph.

Service, within Presidency-towns and Rangoon, of process issued by Provincial Courts.

86. Whenever any process issued by any Court established beyond the limits of the towns of Calcutta, Madras, Bombay and Rangoon is to be served within any such town, it shall be sent to the Court of Small Causes, within whose jurisdiction the process is to be served,

and such Court of Small Causes shall deal with such process in the same manner as if the process had been issued by itself,

and shall then return the process to the Court from which it issued.

Service on defendant in jail.

87. If the defendant be in jail, the summons shall be delivered to the officer in charge of the jail in which the defendant is confined, and such officer shall

shall cause the summons to be served upon the defendant.

The summons shall be returned to the Court from which it issued, with a statement of the service endorsed thereon and signed by the officer in charge of the jail and by the defendant.

Procedure if jail be in different district.

88. If the jail in which the defendant is confined is not in the district in which the suit is instituted, the summons may be sent by post or otherwise to the officer in charge of such jail, and such officer shall cause the summons to be served upon the defendant, and shall return the summons to the Court from which it issued, with a statement of the service endorsed thereon, and signed as provided in section 87.

Service when defendant resides out of British India and has no agent to accept service.

89. If the defendant resides out of British India, and has no agent in British India empowered to accept the service, the summons shall be addressed to the defendant at the place where he is residing, and forwarded to him by post if there be postal communication between such place and the place where the Court is situate.

Service through British Resident or Agent of Government.

90. If there be a British Resident or Agent of Government in or for the territory in which the defendant resides, the summons may be sent to such Resident or Agent, by post or otherwise, for the purpose of being served upon the defendant; and if the Resident or Agent returns the summons with an endorsement under his hand that the summons has been served on the defendant in manner hereinbefore directed, such endorsement shall be conclusive evidence of the service.

Substitution of letter for summons.

91. The Court may, notwithstanding anything hereinbefore contained, substitute for the summons a letter signed by the Judge or such officer as he appoints in this behalf, when the defendant is, in the opinion of the Court, of a rank which entitles him to such mark of consideration.

The letter shall contain all the particulars required to be stated in the summons, and, subject to the provisions

visions contained in section 92, shall be treated in all respects as a summons.

92. When a letter is so substituted for a summons, it may be sent to the defendant by post or by a special messenger selected by the Court, or in any other manner which the Court thinks fit; unless the defendant has an agent empowered to accept service of summons, in which case the letter may be delivered or sent to such agent.

Mode of sending such letter.

Service of Process.

93. Every process issued under this Code shall be served at the expense of the party on whose behalf it is issued, unless the Court otherwise directs.

Process to be served at expense of party issuing.

The court-fee leviable for such service shall be levied within a time to be fixed by the Court before the process is issued.

Costs of service.

94. All notices and orders required by this Code to be given to or served on any person shall be in writing, and shall be served in the manner hereinbefore provided for the service of summons.

Notices and orders in writing how served.

Postage.

95. Postage, where chargeable on any notice, summons or letter issued under this Code and forwarded by post, and the fee for registering the same, shall be paid within a time to be fixed by the Court before the communication is forwarded:

Postage.

Provided that the Local Government, with the previous sanction of the Governor General in Council, may remit such postage, or fee, or both, or may prescribe a scale of court-fees to be levied in lieu thereof.

CHAPTER VII.

Of the Appearance of the Parties and Consequence of Non-appearance.

96. On the day fixed in the summons for the defendant to appear and answer, the parties shall be in attendance

Parties to appear on day fixed in

summons for defendant to appear and answer.

attendance at the court-house in person or by their respective pleaders, and the suit shall then be heard, unless the hearing be adjourned to a future day fixed by the Court.

Dismissal of suit where summons not served in consequence of plaintiff's failure to pay fee for issuing.

97. If, on the day so fixed for the defendant to appear and answer, it be found that the summons has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee leviable for such service, the Court may order that the suit be dismissed:

Proviso.

Provided that no such order shall be passed, although the summons has not been served upon the defendant, if, on the day fixed for him to appear and answer, he attends in person or by agent, when he is allowed to appear by agent.

If neither party appears, suit to be dismissed.

98. If on the day fixed for the defendant to appear and answer, or on any other subsequent day to which the hearing of the suit is adjourned, neither party appears, the suit shall be dismissed, unless the Judge, for reasons to be recorded under his hand, otherwise directs.

In such case plaintiff may bring fresh suit:

99. Whenever a suit is dismissed under section 97 or section 98, the plaintiff may (subject to the law of limitation) bring a fresh suit; or if, within the period of thirty days from the date of the order dismissing the suit, he satisfies the Court that there was a sufficient excuse for his not paying the court-fee required within the time allowed for the service of the summons, or for his non-appearance, as the case may be, the Court shall pass an order to set aside the dismissal and appoint a day for proceeding with the suit.

or Court may restore suit to its file.

Dismissal of suit where plaintiff, after summons returned unserved, fails for a year to apply for fresh summons.

99A. If, after a summons has, whether before or after the first day of June, 1882, been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails for a period of one year from such return to apply for the issue of a fresh summons and to satisfy the Court that he has used his best endeavours to discover the residence of the defendant who has not been served, or that such defendant

defendant is avoiding service of process, the Court may dismiss the suit as against such defendant.

In such case the plaintiff may (subject to the law of limitation) bring a fresh suit.

100. If the plaintiff appears and the defendant does not appear, the procedure shall be as follows:

Procedure if only plaintiff appears,

(*a*) if it is proved that the summons was duly served, the Court may proceed *ex parte:*

when summons duly served,

(*b*) if it is not proved that the summons was duly served, the Court shall direct a second summons to be issued and served on the defendant:

when summons not duly served,

(*c*) if it is proved that the summons was served on the defendant, but not in sufficient time to enable him to appear and answer on the day fixed in the summons, the Court shall postpone the hearing of the suit to a future day to be fixed by the Court, and shall direct notice of such day to be given to the defendant.

when summons served, but not in due time.

If it is owing to the plaintiff's default that the summons was not served in sufficient time, the Court shall order him to pay the costs occasioned by such postponement.

101. If the Court has adjourned the hearing of the suit *ex parte*, and the defendant, at or before such hearing, appears and assigns good cause for his previous non-appearance, he may, upon such terms as the Court directs as to costs or otherwise, be heard in answer to the suit, as if he had appeared on the day fixed for his appearance.

Procedure where defendant appears on day of adjourned hearing, and assigns good cause for previous non-appearance.

102 If the defendant appears and the plaintiff does not appear, the Court shall dismiss the suit, unless the defendant admits the claim, or part thereof, in which case the Court shall pass a decree against the defendant upon such admission, and, where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder.

Procedure where defendant only appears.

103. When a suit is wholly or partially dismissed under section 102, the plaintiff shall be precluded from bringing a fresh suit in respect of the same cause

Decree against plaintiff by default bars fresh suit.

cause of action. But he may apply for an order to set the dismissal aside; and, if it be proved that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall set aside the dismissal upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit.

No order shall be made under this section unless the plaintiff has served the defendant with notice in writing of his application.

Procedure where defendant residing out of British India does not appear.

104. If, on the day fixed for the hearing of a suit against a defendant residing out of British India, who has no agent empowered to accept service of summons, or on any day to which the hearing has been adjourned, the defendant does not appear, the plaintiff may apply to the Court for permission to proceed with his suit, and the Court may direct that the plaintiff be at liberty to proceed with his suit in such manner and subject to such conditions as the Court thinks fit.

Proceedure in case of non-attendance of one or more of several plaintiffs.

105. If there be more plaintiffs than one, and one or more of them appear, and the others do not appear, the Court may, at the instance of the plaintiff or plaintiffs appearing, permit the suit to proceed in the same way as if all the plaintiffs had appeared, and pass such order as it thinks fit.

Procedure in case of non-attendance of one or more of several defendants.

106. If there be more defendants than one, and one or more of them appear, and the others do not appear, the suit shall proceed, and the Court shall, at the time of passing judgment, make such order as it thinks fit with respect to the defendants who do not appear.

Consequence of non-attendance, without sufficient cause shewn, of party ordered to appear in person.

107. If a plaintiff or defendant, who has been ordered to appear in person under the provisions of section 66 or section 436, does not appear in person, or shew sufficient cause to the satisfaction of the Court for failing so to appear, he shall be subject to all the provisions of the foregoing sections applicable to plaintiffs and defendants, respectively, who do not appear.

Of

Of setting aside Decrees ex parte.

108. In any case in which a decree is passed *ex parte* against a defendant, he may apply to the Court by which the decree was made for an order to set it aside; Setting aside decree *ex parte* against defendant.

and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall pass an order to set aside the decree upon such terms as to costs, payment into court or otherwise, as it thinks fit, and shall appoint a day for proceeding with the suit.

109. No decree shall be set aside on any such application as aforesaid, unless notice thereof in writing has been served on the opposite party. No decree to be set aside without notice to opposite party.

CHAPTER VIII.

Of Written Statements and Set-off.

110. The parties may, at any time before or at the first hearing of the suit, tender written statements of their respective cases, and the Court shall receive such statements and place them on the record. Written statements.

111. If in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, and if in such claim of the defendant against the plaintiff both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, tender a written statement containing the particulars of the debt sought to be set-off. Particulars of set-off to be given in written statement.

The Court shall thereupon inquire into the same, and if it finds that the case fulfils the requirements of the former part of this section, and that the amount claimed to be set-off does not exceed the pecuniary limits of its jurisdiction, the Court shall set-off the one debt against the other. Inquiry.

Such

Effect of set-off.

Such set-off shall have the same effect as a plaint in a cross-suit so as to enable the Court to pronounce a final judgment in the same suit, both on the original and on the cross claim; but it shall not affect the lien, upon the amount decreed, of any pleader in respect of the costs payable to him under the decree.

Illustrations.

(*a*) A bequeaths Rs. 2,000 to B, and appoints C his executor and residuary legatee. B dies and D takes out administration to B's effects. C pays Rs. 1,000 as surety for D. Then D sues C for the legacy. C cannot set-off the debt of Rs. 1,000 against the legacy, for neither C nor D fills the same character with respect to the legacy as they fill with respect to the payment of the Rs. 1,000.

(*b*) A dies intestate and in debt to B. C takes out administration to A's effects, and B buys part of the effects from C. In a suit for the purchase-money by C against B, the latter cannot set-off the debt against the price, for C fills two different characters, one as the vendor to B, in which he sues B, and the other as representative to A.

(*c*) A sues B on a bill of exchange. B alleges that A has wrongfully neglected to insure B's goods and is liable to him in compensation which he claims to set-off. The amount not being ascertained cannot be set-off.

(*d*) A sues B on a bill of exchange for Rs. 500. B holds a judgment against A for Rs. 1,000. The two claims being both definite pecuniary demands may be set-off.

(*e*) A sues B for compensation on account of a trespass. B holds a promissory note for Rs. 1,000 from A and claims to set-off that amount against any sum that A may recover in the suit. B may do so, for as soon as A recovers, both sums are definite pecuniary demands.

(*f*) A and B sue C for Rs. 1,000. C cannot set-off a debt due to him by A alone.

(*g*) A sues B and C for Rs. 1,000. B cannot set-off a debt due to him alone by A.

(*h*) A owes the partnership-firm of B and C Rs. 1,000. B dies leaving C surviving. A sues C for a debt of Rs. 1,500 due in his separate character. C may set-off the debt of Rs. 1,000.

No written statement to be received after first hearing.

112. Except as provided in the last preceding section, no written statement shall be received after the first hearing of the suit:

Provided

Provided that the Court may at any time require a written statement, or additional written statement, from any of the parties, and fix a time for presenting the same: Provisos.

Provided also that a written statement, or an additional written statement, may, with the permission of the Court, be received at any time for the purpose of answering written statements so required and presented.

113. If any party from whom a written statement is so required fails to present the same within the time fixed by the Court, the Court may pass a decree against him, or make such order in relation to the suit as it thinks fit. Procedure when party fails to present written statement called for by Court.

114. Written statements shall be as brief as the nature of the case admits, and shall not be argumentative, but shall be confined as much as possible to a simple narrative of the facts which the party by whom or on whose behalf the written statement is made believes to be material to the case, and which he either admits or believes he will be able to prove. Frame of written statements.

Every such statement shall be divided into paragraphs, numbered consecutively, and each paragraph containing as nearly as may be a separate allegation.

115. Written statements shall be signed and verified in the manner hereinbefore provided for signing and verifying plaints, and no written statement shall be received unless it be so signed and verified. Written statements to be signed and verified.

116. If it appears to the Court that any written statement, whether called for by the Court or spontaneously tendered, is argumentative or prolix, or contains matter irrelevant to the suit, the Court may amend it then and there, or may, by an order to be endorsed thereon, reject the same, or return it to the party by whom it was made for amendment within a time to be fixed by the Court, imposing such terms as to costs or otherwise as the Court thinks fit. Power of Court as to argumentative, prolix or irrelevant written statements.

When any amendment is made under this section, the Judge shall attest it by his signature. Attestation of amendments.

When

Effect of rejection.

When a statement has been rejected under this section, the party making it shall not present another written statement, unless it be expressly called for or allowed by the Court.

CHAPTER IX.

Of the Examination of the Parties by the Court.

Ascertainment whether allegations in plaint and written statements admitted or denied.

117. At the first hearing of the suit, the Court shall ascertain from the defendant or his pleader whether he admits or denies the allegations of fact made in the plaint, and shall ascertain from each party or his pleader whether he admits or denies such allegations of fact as are made in the written statement (if any) of the opposite party, and as are not expressly or by necessary implication admitted or denied by the party against whom they are made. The Court shall record such admissions and denials.

Oral examination of party, or companion of himself or his pleader.

118. At the first hearing of the suit, or at any subsequent hearing, any party appearing in person or present in Court, or any person able to answer any material questions relating to the suit by whom such party or his pleader is accompanied, may be examined orally by the Court: and the Court may, if it thinks fit, put in the course of such examination questions suggested by either party.

Substance of examination to be written.

119. The substance of the examination shall be reduced to writing by the Judge, and shall form part of the record.

Consequence of refusal or inability of pleader to

120. If the pleader of any party who appears by a pleader refuses or is unable to answer any material question relating to the suit which the Court is of opinion that the party whom he represents ought to answer, and is likely to be able to answer if interrogated in person, the Court may postpone the hearing of the suit to a future day, and direct that such party shall appear in person on such day.

If such party fails without lawful excuse to appear in person on the day so appointed, the Court may

may pass a decree against him, or make such order in relation to the suit as it thinks fit.

CHAPTER X.

OF DISCOVERY AND OF THE ADMISSION, INSPECTION, PRODUCTION, IMPOUNDING AND RETURN OF DOCUMENTS.

Power to deliver interrogatories.

121. Any party may at any time by leave of the Court deliver through the Court interrogatories in writing for the examination of the opposite party, or, where there are more opposite parties than one, any one or more of such parties, with a note at the foot thereof stating which of such interrogatories each of such persons is required to answer:

Provided that no party shall deliver more than one set of interrogatories to the same person without the permission of the Court, and that no defendant shall deliver interrogatories for the examination of the plaintiff unless such defendant has previously tendered a written statement and such statement has been received and placed on the record.

Service of interrogatories.

122. Interrogatories delivered under section 121 shall be served on the pleader (if any) of the party interrogated, or in the manner hereinbefore provided for the service of summons, and the provisions of sections 79, 80, 81 and 82 shall, in the latter case, apply so far as may be practicable.

Inquiry into propriety of exhibiting interrogatories.

123. The Court, in adjusting the costs of the suit, shall, at the instance of any party, inquire or cause inquiry to be made into the propriety of delivering such interrogatories; and if it thinks that such interrogatories have been delivered unreasonably, vexatiously or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be borne by the party in fault.

Service of interrogatories on officer of corporation or company.

124. If any party to a suit be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons empowered by law to sue or be sued, whether in its own name or in the name

name of any officer or other person, any opposite party may apply to the Court for an order allowing him to deliver interrogatories to any member or officer of such corporation, company or body, and an order may be made accordingly.

Power to refuse to answer in terrogatories as irrelevant, &c.

125. Any party called upon to answer interrogatories, whether by himself or by any such member or officer, may refuse to answer any interrogatory on the ground that it is irrelevant, or is not put *bonâ fide* for the purposes of the suit, or that the matter inquired after is not sufficiently material at that stage of the suit, or on any other like ground.

Time for filing affidavit in answer.

126. Interrogatories shall be answered by affidavit to be filed in court within ten days from the service thereof or within such further time as the Judge may allow.

Procedure where party omits to answer sufficiently.

127. If any person interrogated omits or refuses to answer, or answers insufficiently, any interrogatory, the party interrogating may apply to the Court for an order requiring him to answer or to answer further, as the case may be. And an order may be made requiring him to answer or to answer further either by affidavit or by *vivâ voce* examination as the Judge may direct: provided that the Judge shall not require an answer to any interrogatory which in his opinion need not have been answered under section 125.

Power to demand admission of genuineness of documents.

128. Either party may, by a notice through the Court, within a reasonable time not less than ten days before the hearing, require the other party to admit (saving all just exceptions to the admissibility of such document in evidence) the genuineness of any document material to the suit.

The admission shall also be made in writing signed by the other party or his pleader and filed in court.

If such notice be not given, no costs of proving such document shall be allowed, unless the Judge otherwise orders.

If such notice is not complied with within four days

days after its being served, and the Judge thinks it reasonable that the admission should have been made, the party refusing shall bear the expense of proving such document, whatever may be the result of the suit.

Power to order discovery of document.

129. The Court may, at any time during the pendency therein of any suit, order any party to the suit to declare by affidavit all the documents which are or have been in his possession or power relating to any matter in question in the suit, and any party to the suit may, at any time before the first hearing, apply to the Court for a like order.

Affidavit in answer to such order.

Every affidavit made under this section shall specify which, if any, of the documents therein mentioned the declarant objects to produce, together with the grounds of such objection.

Power to order production of documents during suit.

130. The Court may, at any time during the pendency therein of any suit, order the production by any party thereto of such of the documents in his possession or power relating to any matter in question in such suit or proceeding as the Court thinks right; and the Court may deal with such documents when produced in such manner as appears just.

Notice to produce for inspection documents referred to in plaint, &c.

131. Any party to a suit may at any time before or at the hearing thereof give notice through the Court to any other party to produce any specified document for the inspection of the party giving such notice or of his pleader, and to permit such party or pleader to take copies thereof.

Consequence of non-compliance with such notice.

No party failing to comply with such notice shall afterwards be at liberty to put any such document in evidence on his behalf in such suit, unless he satisfies the Court that such document relates only to his own title, or that he had some other and sufficient cause for not complying with such notice.

Party receiving such notice to deliver notice when and where inspection may be had.

132. The party to whom such notice is given shall, within ten days from the receipt thereof, deliver through the Court to the party giving the same a notice stating a time within three days from such delivery at which the documents, or such of them as he

he does not object to produce, may be inspected at his pleader's office or some other convenient place, and stating which, if any, of the documents he objects to produce, and on what grounds.

Application for order of inspection.

133. If any party served with notice under section 131 omits to give notice under section 132 of the time for inspection, or objects to give inspection, or names an inconvenient place for inspection, the party desiring it may apply to the Court for an order of inspection.

Application to be founded on affidavit.

134. Except in the case of documents referred to in the plaint, written statement or affidavit of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing (*a*) of what documents inspection is sought, (*b*) that the party applying is entitled to inspect them, and (*c*) that they are in the possession or power of the party against whom the application is made.

Power to order issue or question on which right to discovery depends to be first determined.

135. If the party from whom discovery of any kind or inspection is sought objects to the same or any part thereof, and if the Court is satisfied that the right to such discovery or inspection depends on the determination of any issue or question in dispute in the suit, or that for any other reason it is desirable that any such issue or question should be determined before deciding upon the right to the discovery or inspection, the Court may order that the issue or question be determined first and reserve the question as to the discovery or inspection.

Consequences of failure to answer or give inspection.

136. If any party fails to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been duly served, he shall, if a plaintiff, be liable to have his suit dismissed for want of prosecution, and if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not appeared and answered;

and the party interrogating or seeking discovery, production or inspection may apply to the Court for an order to that effect, and the Court may make such order accordingly.

Any

Any party failing to comply with any order under this chapter, to answer interrogatories or for discovery, production or inspection, which has been served personally upon him, shall also be deemed guilty of an offence under section 188 of the Indian Penal Code.

Court may send for papers from its own records or from other Courts.

137. The Court may of its own accord, and may in its discretion upon the application of any of the parties to a suit, send for, either from its own records or from any other Court, the record of any other suit or proceeding, and inspect the same.

Every application made under this section shall (unless the Court otherwise directs) be supported by an affidavit of the applicant or his pleader, shewing how the record is material to the suit in which the application is made, and that the applicant cannot without unreasonable delay or expense obtain a duly authenticated copy of the record or of such portion thereof as the applicant requires, or that the production of the original is necessary for the purposes of justice.

Nothing contained in this section shall be deemed to enable the Court to use in evidence any document which under the Indian Evidence Act, 1872, would be inadmissible in the suit.

Documentary evidence to be in readiness at first hearing.

138. The parties or their pleaders shall bring with them and have in readiness at the first hearing of the suit, to be produced when called for by the Court, all the documentary evidence of every description in their possession or power, on which they intend to rely, and which has not already been filed in Court, and all documents which the Court at any time before such hearing has ordered to be produced.

Effect of non-production of documents.

139. No documentary evidence in the possession or power of any party which should have been, but has not been, produced in accordance with the requirements of section 138, shall be received at any subsequent stage of the proceedings unless good cause be shown to the satisfaction of the Court for the non-production thereof. And the Judge receiving any such evidence shall record his reasons for so doing.

140. The

Documents to be received by Court.

140. The Court shall receive the documents respectively produced by the parties at the first hearing, provided that the documents produced by each party be accompanied by an accurate list thereof prepared in such form as the High Court may from time to time direct.

Rejection of irrelevant or inadmissible documents.

The Court may at any stage of the suit reject any document which it considers irrelevant or otherwise inadmissible, recording to the grounds of such rejection.

No documents to be placed on record unless proved. Proved documents to be marked and filed.

141. No document shall be placed on the record unless it has been proved or admitted in accordance with the law of evidence for the time being in force. Every document so proved or admitted shall be endorsed with the number and title of the suit, the name of the person producing it, and the date on which it was produced. The Judge shall then endorse with his own hand a statement that it was proved against or admitted by (as the case may be) the person against whom it is used. The document shall then be filed as part of the record:

Entries in shop-books.

Provided that, if the document be an entry in a shop-book or other book, the party on whose behalf such book is produced may furnish a copy of the entry, which may be endorsed as aforesaid, and shall be filed as part of the record, and the Court shall mark the entry, and shall then return the book to the person producing it.

All documents produced at the first hearing and not so proved or admitted shall be returned to the parties respectively producing them.

Rejected documents to be marked,

142. When a document so proved or admitted is relied on as evidence by either party, but the Court considers it inadmissible, it shall be further endorsed with the addition of the word "rejected," and the endorsement shall be signed by the Judge.

and returned.

The document shall then be returned to the party who produced it.

Court may order any document to be impounded.

143. Notwithstanding anything contained in sections 62, 141 and 142, the Court may, if it sees sufficient

cient cause, direct any document or book produced before it in any suit to be impounded and kept in the custody of an officer of the Court, for such period and subject to such conditions as the Court thinks fit.

144. In suits in which an appeal is not allowed, when the suit has been disposed of, and in suits in which an appeal is allowed, when the time for preferring an appeal from the decree has elapsed, or, if an appeal has been preferred, then after the appeal has been disposed of, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit, and placed on the record, shall, unless the document is impounded under section 143, be entitled to receive back the same:

When document admitted in evidence may be returned.

Provided that a document may be returned at any time before either of such events, if the person applying for such return delivers to the proper officer a certified copy of such document to be substituted for the original:

When document may be returned before time limited.

Provided also that no document shall be returned which, by force of the decree, has become void or useless.

Certain documents not to be returned.

On the return of a document which has been admitted in evidence, a receipt shall be given by the party receiving it, in a receipt-book to be kept for the purpose.

Receipt to be given for returned document.

145. The provisions herein contained as to documents shall, so far as may be, apply to all other material objects producible as evidence.

Provisions as to documents applied to material objects.

CHAPTER XI.

Of the Settlement of Issues.

146. Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

Framing of issues.

Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue.

Each

Each material proposition affirmed by one party and denied by the other must form the subject of a distinct issue.

Issues are of two kinds: (*a*) issues of fact, (*b*) issues of law.

At the first hearing of the suit, the Court shall, after reading the plaint and the written statements, if any, and after such examination of the parties as may appear necessary, ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon proceed to frame and record the issues on which the right decision of the case appears to the Court to depend.

When issues both of law and of fact arise in the same suit, and the Court is of opinion that the case may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.

Nothing in this section requires the Court to frame and record issues when the defendant at the first hearing of the suit makes no defence.

Allegations from which issues may be framed.

147. The Court may frame the issues from all or any of the following materials:—

(*a*) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties or persons;

(*b*) allegations made in the plaint or in the written statements (if any) tendered in the suit, or in answer to interrogatories delivered in the suit;

(*c*) the contents of documents produced by either party.

Court may examine witnesses or documents before framing issues.

148. If the Court be of opinion that the issues cannot be correctly framed without the examination of some person not before the Court, or without the inspection of some document not produced in the suit, it may adjourn the framing of the issues to a future day, to be fixed by the Court, and may (subject to the rules contained in the Indian Evidence Act) compel the

the attendance of any person or the production of any document by the person in whose hands it may be, by summons or other process.

Power to amend, add and strike out issues.

149. The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the controversy between the parties shall be so made or framed.

The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced.

Questions of fact or law may by agreement be stated in form of issue.

150. When the parties to a suit are agreed as to the question of fact or of law to be decided between them, they may state the same in the form of an issue, and enter into an agreement in writing

(*a*) that upon the finding of the Court in the affirmative or the negative of such issue, a sum of money specified in the agreement, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, or that one of them be declared entitled to some right or subject to some liability specified in the agreement,

(*b*) that upon such finding some property specified in the agreement and in dispute in the suit shall be delivered by one of the parties to the other of them, or as that other may direct, or

(*c*) that upon such finding one or more of the parties shall do or abstain from doing some particular act, specified in the agreement, and relating to the matter in dispute.

Court, if satisfied that agreement was executed in good faith may pronounce judgment.

151. If the Court be satisfied, after making such inquiry as it deems proper,

(*a*) that the agreement was duly executed by the parties,

(*b*) that they have a substantial interest in the decision of such question as aforesaid, and

(*c*) that the same is fit to be tried and decided,

it

it may proceed to record and try the issue, and state its finding or opinion thereon in the same manner as if the issue had been framed by the Court;

and may, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement;

and upon the judgment so given, decree shall follow and may be executed in the same way as if the judgment had been pronounced in a contested suit.

CHAPTER XII.

DISPOSAL OF THE SUIT AT THE FIRST HEARING.

If parties not at issue on any question of law or fact.

152. If at the first hearing of a suit it appears that the parties are not at issue on any question of law or of fact, the Court may at once pronounce judgment.

If one of several defendants be not at issue with plaintiff.

153. Where there are more defendants than one, and any one of the defendants is not at issue with the plaintiff on any question of law or fact, the Court may at once pronounce judgment for or against such defendant, and the suit shall proceed only against the other defendants.

If parties at issue on questions of law or fact.

154. When the parties are at issue on some question of law or of fact, and issues have been framed by the Court as hereinbefore provided, if the Court be satisfied that no further argument or evidence than the parties can at once supply is required upon such of the issues as may be sufficient for the decision of the suit, and that no injustice will result from proceeding with the suit forthwith, the Court may proceed to determine such issues,

Court may determine issue, and pronounce judgment.

and, if the finding thereon is sufficient for the decision, may pronounce judgment accordingly, whether the summons has been issued for the settlement of issues only or for the final disposal of the suit:

Provided that, where the summons has been issued for the settlement of issues only, the parties or their pleaders are present and none of them object.

If

If the finding is not sufficient for the decision, the Court shall postpone the further hearing of the suit, and shall fix a day for the production of such further evidence, or for such further argument, as the case requires.

If either party fails to produce his evidence, Court may pronounce judgment, or adjourn suit.

155. If the summons has been issued for the final disposal of the suit, and either party fails without sufficient cause to produce the evidence on which he relies, the Court may at once pronounce judgment, or may, if it thinks fit, after framing and recording issues under section 146, adjourn the suit for the production of such evidence as may be necessary to its decision upon such issues.

CHAPTER XIII.

Of Adjournments.

Court may grant time, and adjourn hearing.

156. The Court may, if sufficient cause be shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit.

Costs of adjournment.

In all such cases the Court shall fix a day for the further hearing of the suit, and may make such order as it thinks fit with respect to the costs occasioned by the adjournment:

Provided that, when the hearing of evidence has once begun, the hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Procedure if parties fail to appear on day fixed.

157. If, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by chapter VII, or make such other order as it thinks fit.

Court may proceed notwithstanding either party

158. If any party to a suit to whom time has been granted fails to produce his evidence, or to cause the attendance of his witnesses, or to perform any other act

fails to produce evidence, &c.

act necessary to the further progress of the suit, for which time has been allowed, the Court may, notwithstanding such default, proceed to decide the suit forthwith.

CHAPTER XIV.

OF THE SUMMONING AND ATTENDANCE OF WITNESSES.

Summons to attend to give evidence or produce documents.

159. The parties may, after the summons has been delivered for service on the defendant, whether it be for the settlement of issues only, or for the final disposal of the suit, obtain, on application to the Court or to such officer as it appoints in this behalf, before the day fixed for such settlement or disposal, as the case may be, summonses to persons whose attendance is required either to give evidence or to produce documents.

Expenses of witnesses to be paid into court on applying for summons.

160. The party applying for a summons shall, before the summons is granted and within a period to be fixed by the Court, pay into court such a sum of money as appears to the Court to be sufficient to defray the travelling and other expenses of the person summoned, in passing to and from the court in which he is required to attend, and for one day's attendance.

Scale of expenses.

If the Court be subordinate to a High Court, regard shall be had, in fixing the scale of such expenses, to the rules (if any) laid down by competent authority.

Tender of expenses to witness.

161. The sum so paid into court shall be tendered to the person summoned, at the time of serving the summons, if it can be served personally.

Procedure where insufficient sum paid in.

162. If it appear to the Court or to such officer as it appoints in this behalf that the sum paid into court is not sufficient to cover such expenses, the Court may direct such further sum to be paid to the person summoned as appears to be necessary on that account; and, in case of default in payment, may order such sum to be levied by attachment and sale of the moveable property of the party obtaining the summons; or the Court may discharge the person summoned without requiring him to give evidence; or may both order

order such levy and discharge such person as aforesaid.

If it be necessary to detain the person summoned for a longer period than one day, the Court may, from time to time, order the party at whose instance he was summoned to pay into court such sum as is sufficient to defray the expenses of his detention for such further period, and, in default of such deposit being made, may order such sum to be levied by attachment and sale of the moveable property of the party at whose instance he was summoned; or the Court may discharge the person summoned without requiring him to give evidence; or may both order such levy and discharge such person as aforesaid.

Expenses witness detained more than one day.

163. Every summons for the attendance of a person to give evidence or produce a document shall specify the time and place at which he is required to attend, and also whether his attendance is required for the purpose of giving evidence or to produce a document, or for both purposes; and any particular document which the person summoned is called on to produce shall be described in the summons with reasonable accuracy.

Time, place and purpose of attendance to be specified in summons.

164. Any person may be summoned to produce a document, without being summoned to give evidence; and any person summoned merely to produce a document shall be deemed to have complied with the summons, if he cause such document to be produced instead of attending personally to produce the same.

Summons to produce document.

165. Any person present in court may be required by the Court to give evidence or to produce any document then and there in his actual possession or power.

Power to require persons present in Court to give evidence.

166. Every summons to a person to give evidence or produce a document shall be served as nearly as may be in manner hereinbefore prescribed for the service of summons on the defendant; and the rules contained in chapter VI as to proof of service shall apply in the case of all summonses served under this section.

Summons how served.

167. The

Time for serving summons.

167. The service shall in all cases be made a sufficient time before the time specified in the summons for the attendance of the person summoned, to allow him a reasonable time for preparation and for travelling to the place at which his attendance is required.

Attachment of property of absconding witness.

168. If the serving-officer certify to the Court that the summons for the attendance of a person, either to give evidence or to produce a document, cannot be served, the Court shall examine the serving-officer on oath touching the non-service:

and upon being satisfied that such evidence or production is material, and that the person for whose attendance the summons has been issued is absconding or keeping out of the way for the purpose of avoiding the service of the summons, may issue a proclamation requiring him to attend to give evidence, or produce the document, at a time and place to be named therein; and a copy of such proclamation shall be affixed on the outer door of the house in which he ordinarily resides.

If he does not attend at the time and place named in such proclamation, the Court may in its discretion, at the instance of the party on whose application the summons was issued, make an order for the attachment of the property of the person whose attendance is required, to such amount as the Court thinks fit, not exceeding the amount of the costs of attachment and of the fine which may be imposed under section 170:

Provided that no Court of Small Causes shall make an order for the attachment of immoveable property.

If witness appears attachment may be withdrawn.

169. If, on the attachment of his property, such person appears and satisfies the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court shall direct that the property be released from attachment, and shall make such order as to the costs of the attachment as it thinks fit.

170. If

170. If such person does not appear, or, appearing, fails to satisfy the Court that he did not abscond or keep out of the way to avoid service of the summons, and that he had not notice of the proclamation in time to attend at the time and place named therein, the Court may impose upon him such fine not exceeding five hundred rupees as the Court thinks fit, having regard to his condition in life and all the circumstances of the case, and may order the property attached, or any part thereof, to be sold for the purpose of satisfying all costs incurred in consequence of such attachment, together with the amount of the said fine, if any:

Procedure if witness fails to appear.

Provided that, if the person whose attendance is required pays into court the costs and fine as aforesaid, the Court shall order the property to be released from attachment.

171. Subject to the rules of this Code as to attendance and appearance and to the provisions of the Indian Evidence Act, 1872, if the Court at any time thinks it necessary to examine any person other than a party to the suit and not named as a witness by a party to the suit, the Court may, of its own motion, cause such person to be summoned as a witness to give evidence, or to produce any document in his possession, on a day to be appointed, and may examine him as a witness or require him to produce such document.

Court may of its own accord summon as witnesses strangers to suit.

172. Subject as last aforesaid, whoever is summoned to appear and give evidence in a suit must attend at the time and place named in the summons for that purpose, and whoever is summoned to produce a document must either attend to produce it, or cause it to be produced, at such time and place.

Duty of persons summoned to give evidence or produce document.

173. No person so summoned and attending shall depart unless and until (*a*) he has been examined or has produced the document and the Court has risen, or (*b*) he has obtained the Court's leave to depart.

When they may depart.

174. If any person on whom a summons to give evidence or produce a document has been served fails to

Consequences of failure to comply with summons.

to comply with the summons, or if any person so summoned and attending departs in contravention of section 173, the Court may order him to be arrested and brought before the Court:

Provided that no such order shall be made when the Court has reason to believe that the person so failing had a lawful excuse for such failure.

When any person so brought before the Court fails to satisfy it that he had a lawful excuse for not complying with the summons, the Court may sentence him to fine not exceeding five hundred rupees.

Explanation.—Non-payment or non-tender of a sum sufficient to defray the expenses mentioned in section 160 shall be deemed a lawful excuse within the meaning of this section.

Procedure when witness apprehended cannot give evidence or produce documents.

If any person so apprehended and brought before the Court cannot, owing to the absence of the parties or any of them, give the evidence or produce the document which he has been summoned to give or produce, the Court may require him to give reasonable bail or other security for his appearance at such time and place as it thinks fit, and on such bail or security being given, may release him.

Procedure when witness absconds.

175. If any person so failing to comply with a summons absconds or keeps out of the way, so that he cannot be apprehended and brought before the Court, the provisions of sections 168, 169 and 170 shall, *mutatis mutandis*, apply.

Persons bound to attend in person.

176. No one shall be bound to attend in person to give evidence or to be examined in Court unless he resides—

(*a*) within the local limits of its ordinary original jurisdiction, or

(*b*) without such limits and at a place less than fifty or (where there is railway-communication for five-sixths of the distance between the place where he resides and the place where the Court is situate) two hundred miles distance from the court-house.

Consequence

177. If any party to a suit present in Court refuses,

refuses, without lawful excuse, when required by the Court, to give evidence or to produce any document then and there in his actual possession or power, the Court may in its discretion either pass a decree against him, or make such order in relation to the suit as the Court thinks fit.

of refusal of party to give evidence when called on by Court.

178. Whenever any party to a suit is required to give evidence or to produce a document, the rules as to witnesses contained in this Code shall apply to him so far as they are applicable.

Rules as to witnesses to apply to parties summoned.

CHAPTER XV.

Of the Hearing of the Suit and Examination of Witnesses.

179. On the day fixed for the hearing of the suit, or on any other day to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

Statement and production of evidence by party having right to begin.

Explanation.—The plaintiff has the right to begin unless where the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Rules as to right to begin.

180. The other party shall then state his case and produce his evidence (if any).

Statement and production of evidence by other party.

The party beginning is then entitled to reply.

Reply by party beginning.

Where there are several issues, the burden of proving some of which lies on the other party, the party beginning may, at his option, either produce his evidence on those issues or reserve it by way of answer to the evidence produced by the other party. In the latter case, the party beginning may produce evidence on those issues after the other party has produced all his evidence, and the other party may then

then reply specially on the evidence so produced by the party beginning; but the party beginning will then be entitled to reply generally on the whole case.

Witnesses to be examined in open court.

181. The evidence of the witnesses in attendance shall be taken orally in open court in the presence, and under the personal direction and superintendence, of the Judge.

How evidence shall be taken in appealable cases.

182. In cases in which an appeal is allowed, the evidence of each witness shall be taken down in writing, in the language of the Court, by or in the presence and under the personal direction and superintendence of the Judge, not ordinarily in the form of question and answer, but in that of a narrative, and, when completed, shall be read over in the presence of the Judge and of the witness, and also in the presence of the parties or their pleaders, and the Judge shall, if necessary, correct the same and shall sign it.

When deposition to be interpreted.

183. If the evidence is taken down under section 182 in a language different from that in which it was given, and the witness does not understand the language in which it is taken down, the evidence as taken down in writing shall be interpreted to him in the language in which it was given.

Memorandum when evidence not taken down by judge.

184. In cases in which the evidence is not taken down in writing by the Judge, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

When evidence may be taken in English.

185. Where English is not the language of the Court, but all the parties to the suit who appear in person, and the pleaders of such as appear by pleaders, do not object to have such evidence as is given in English taken down in English, the Judge may so take it down with his own hand.

Any particular question and answer may

186. The Court may of its own motion or on the application of any party or his pleader take down, or cause to be taken down, any particular question and answer,

answer, or any objection to any question, if there appear any special reason for so doing.

be taken down.

187. If any question put to a witness be objected to by a party or his pleader, and the Court allows the same to be put, the Judge shall take down the question, the answer, the objection and the name of the person making it, together with the decision of the Court thereon.

Questions objected to and allowed by Court.

188. The Court may record such remarks as it thinks material respecting the demeanour of any witness while under examination.

Remarks on demeanour of witnesses.

189. In cases in which an appeal is not allowed, it shall not be necessary to take down the evidence of the witnesses in writing at length; but the Judge, as the examination of each witness proceeds, shall make a memorandum of the substance of what he deposes, and such memorandum shall be written and signed by the Judge with his own hand, and shall form part of the record.

Memorandum of evidence in unappealable cases.

190. If the Judge be rendered unable to make a memorandum as above required by this chapter, he shall cause the reason of such inability to be recorded, and shall cause the memorandum to be made in writing from his dictation in open court.

Judge unable to make such memorandum to record reason of his inability.

Every memorandum so made shall form part of the record.

191. Where the Judge taking down any evidence, or causing any memorandum to be made under this chapter, dies or is removed from the Court before the conclusion of the suit, his successor may, if he thinks fit, deal with such evidence or memorandum as if he himself had taken it down or caused it to be made.

Power to deal with evidence taken down by Judge removed before conclusion of suit.

192. If a witness be about to leave the jurisdiction of the Court, or if other sufficient cause be shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of either party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

Power to examine witness immediately.

Where

Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and may then be read at any hearing of the suit.

Court may recall and examine witness.

193. The Court may at any stage of the suit recall any witness who has been examined and who has not departed in accordance with section 173, and may (subject to the provisions of the Indian Evidence Act, 1872) put such questions to him as the Court thinks fit.

CHAPTER XVI.

OF AFFIDAVITS.

Power to order any point to be proved by affidavit.

194. Any Court of first instance and any appellate Court may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing, on such conditions as the Court thinks reasonable:

Provided that where it appears to the Court that either party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

Power to order attendance of declarant for cross-examination.

195 Upon any application evidence may be given by affidavit, but the Court may, at the instance of either party, order the attendance for cross-examination of the declarant.

Such attendance shall be in court unless the declarant is exempted under this Code from personal appearance in court, or the Court otherwise directs.

Matters to which affidavits shall be confined.

196. Affidavits shall be confined to such facts as the declarant is able of his own knowledge to prove, except

except on interlocutory applications, on which statements of his belief may be admitted, provided that reasonable grounds thereof be set forth.

The costs of every affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall (unless the Court otherwise directs) be paid by the party producing the same.

Oath of declarant by whom to be administered.

197. In the case of any affidavit under this Code—

(*a*) any Court or Magistrate, or

(*b*) any officer whom a High Court may appoint in this behalf, or

(*c*) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf,

may administer the oath of the declarant.

CHAPTER XVII.

OF JUDGMENT AND DECREE.

Judgment when pronounced.

198. The Court, after the evidence has been duly taken and the parties have been heard either in person or by their respective pleaders or recognized agents, shall pronounce judgment in open court, either at once or on some future day, of which due notice shall be given to the parties or their pleaders.

Power to pronounce judgment written by Judge's predecessor.

199. A Judge may pronounce a judgment written by his predecessor but not pronounced.

Language of judgment.

200. The judgment shall be written in the language of the Court, or in English, or in the Judge's mother-tongue.

Translation of judgment.

201. Whenever the judgment is written in any language other than that of the Court, the judgment shall, if any of the parties so require, be translated into the language of the Court, and the translation shall also be signed by the Judge or such officer as he appoints in this behalf.

202. The

Judgment to be dated and signed.

202. The judgment shall be dated and signed by the Judge in open court at the time of pronouncing it, and shall not be altered or added to, save to correct verbal errors or to supply some accidental defect not affecting a material part of the case, or on review.

Judgments of Small Cause Courts.

203. The judgments of the Courts of Small Causes need not contain more than the points for determination and the decision thereupon.

Judgments of other Courts.

The judgments of all other Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

Court to state its decision on each issue. Exception.

204. In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons thereof, upon each separate issue, unless the finding upon any one or more of the issues be sufficient for the decision of the suit.

Date of decree.

205. The decree shall bear date the day on which the judgment was pronounced; and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.

Contents of decree.

206. The decree must agree with the judgment: it shall contain the number of the suit, the names and descriptions of the parties, and particulars of the claims, as stated in the register, and shall specify clearly the relief granted or other determination of the suit.

The decree shall also state the amount of costs incurred in the suit, and by what parties and in what proportions such costs are to be paid.

Power to amend decree.

If the decree is found to be at variance with the judgment, or if any clerical or arithmetical error be found in the decree, the Court shall, of its own motion or on that of any of the parties, amend the decree so as to bring it into conformity with the judgment or to correct such error: provided that reasonable notice has been given to the parties or their pleaders of the proposed amendment.

207. When

207. When the subject-matter of the suit is immoveable property, and such property is identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.

Decree for recovery of immoveable property.

208. When the suit is for moveable property, if the decree be for the delivery of such property, it shall also state the amount of money to be paid as an alternative if delivery cannot be had.

Decree for delivery of moveable property.

209. When the suit is for a sum of money due to the plaintiff, the Court may, in the decree, order interest at such rate as the Court deems reasonable to be paid on the principal sum adjudged, from the date of the suit to the date of the decree, in addition to any interest adjudged on such principal sum for any period prior to the institution of the suit, with further interest at such rate as the Court deems reasonable on the aggregate sum so adjudged, from the date of the decree to the date of payment, or to such earlier date as the Court thinks fit.

In suits for money, decree may order certain interest to be paid on principal sum adjudged.

210. In all decrees for the payment of money, the Court may for any sufficient reason order that the amount shall be paid by instalments, with or without interest.

Decree may direct payment by instalments.

And after the passing of any such decree the Court may, on the application of the judgment-debtor and with the consent of the decree-holder, order that the amount decreed be paid by instalments on such terms as to the payment of interest, the attachment of the property of the defendant, or the taking of security from him, or otherwise, as it thinks fit:

Order, after decree, for payment by instalments.

Save as provided in this section and section 206, no decree shall be altered at the request of parties.

211. When the suit is for the recovery of possession of immoveable property yielding rent or other profit, the Court may provide in the decree for the payment of rent or mesne profits in respect of such property from the institution of the suit until the delivery of possession to the party in whose favour the decree is made, or until the expiration of three years from

In suits for land, Court may decree payment of mesne profits with interest.

from the date of the decree (whichever event first occurs), with interest thereupon at such rate as the Court thinks fit.

Explanation.—"Mesne profits" of property mean those profits which the person in wrongful possession of such property actually received, or might with ordinary diligence have received, therefrom, together with interest on such profits.

Court may determine amount of mesne profits prior to suit, or may reserve inquiry.

212. When the suit is for the recovery of possession of immoveable property and for mesne profits which have accrued on the property during a period prior to the institution of the suit, and the amount of such profits is disputed, the Court may either determine the amount by the decree itself, or may pass a decree for the property and direct an inquiry into the amount of mesne profits, and dispose of the same on further orders.

Administration-suit.

213. When the suit is for an account of any property and for its due administration under the decree of the Court, the Court, before making the decree, shall order such accounts and inquiries to be taken and made, and give such other directions, as it thinks fit.

In the administration by the Court of the property of any person who dies after this Code comes into force, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities proveable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being with respect to the estates of persons adjudged insolvent;

and all persons who in any such case would be entitled to be paid out of such property may come in under the decree for its administration, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

Applications under section 265 of the Indian Contract

tract Act, 1872, shall be deemed to be suits within the meaning of this section.

214. When the suit is to enforce a right of pre-emption in respect of a particular sale of property, and the Court finds for the plaintiff, if the amount of purchase-money has not been paid into court, the decree shall specify a day on or before which it shall be so paid, and shall declare that on payment of such purchase-money, together with the costs (if any) decreed against him, the plaintiff shall obtain possession of the property, but that if such money and costs are not so paid, the suit shall stand dismissed with costs.

Suit to enforce right of pre-emption.

215. When the suit is for the dissolution of a partnership, the Court, before making its decree, may pass an order fixing the day on which the partnership shall stand dissolved, and directing such accounts to be taken and other acts to be done as it thinks fit.

Suit for dissolution of partnership.

215A. When a suit is for an account of pecuniary transactions between a principal and agent, and in all other suits not hereinbefore provided for, where it is necessary, in order to ascertain the amount of money due to or from any party, that an account should be taken, the Court shall, before making its decree, pass an order directing such accounts to be taken as it thinks fit.

Suit for account between principal and agent.

216. If the defendant has set-off the amount of a debt against the claim of the plaintiff, and such set-off has been allowed, the decree shall state what amount is due to the plaintiff and what amount (if any) is due to the defendant, and shall be for the recovery of any sum which appears to be due to either party.

Decree when set-off is allowed.

The decree of the Court, with respect to any sum awarded to the defendant, shall have the same effect, and be subject to the same rules in respect of appeal or otherwise, as if such sum had been claimed by the defendant in a separate suit against the plaintiff.

Effect of decree as to sum awarded to defendant.

217. Certified copies of the judgment and decree shall

Certified

copies of judgment and decree to be furnished.

shall be furnished to the parties on application to the Court, and at their expense.

CHAPTER XVIII.

OF COSTS.

Costs of applications.

218. When disposing of any application under this Code, the Court may give to either party the cost of such application, or may reserve the consideration of such costs for any future stage of the proceedings.

Judgment to direct by whom costs to be paid.

219. The judgment shall direct by whom the costs of each party are to be paid, whether by himself or by any other party to the suit, and whether in whole or in what part or proportion.

Power of Court as to costs.

220. The Court shall have full power to give and apportion costs of every application and suit in any manner it thinks fit, and the fact that the Court has no jurisdiction to try the case is no bar to the exercise of such power:

Provided that, if the Court directs that the costs of any application or suit shall not follow the event, the Court shall state its reasons in writing.

Every order relating to costs made under this Code and not forming part of a decree may be executed as if it were a decree for money.

Costs may be set-off against sum admitted or found to be due.

221. The Court may direct that the costs payable to one party by another shall be set-off against a sum which is admitted or is found in the suit to be due from the former to the latter.

Interest on costs.
Payment of costs out of subject-matter.

222. The Court may give interest on costs at any rate not exceeding six per cent. per annum, and may direct that costs, with or without interest, be paid out of, or charged upon, the subject-matter of the suit.

CHAPTER XIX.

OF THE EXECUTION OF DECREES.

A.—Of the Court by which Decrees may be executed.

Court by

223. A decree may be executed either by the Court

Court which passed it or by the Court to which it is sent for execution under the provisions hereinafter contained.

which decree may be executed.

The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court,

(*a*) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(*b*) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(*c*) if the decree directs the sale of immoveable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(*d*) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

The Court which passed a decree may of its own motion send it for execution to any Court subordinate thereto.

The Court to which a decree is sent under this section for execution shall certify to the Court which passed it the fact of such execution, or, where the former Court fails to execute the same, the circumstances attending such failure.

If the decree has been passed in a case cognizable by a Court of Small Causes and the Court which passed it wishes it to be executed in Calcutta, Madras, Bombay or Rangoon, such Court may send to the Court of Small Causes in Calcutta, Madras, Bombay or Rangoon, as the case may be, the copies and certificate respectively mentioned in clauses (*a*), (*b*) and (*c*) of section 224; and such Court of Small Causes shall thereupon execute the decree as if it had been passed by itself.

If

If the Court to which a decree is to be sent for execution is situate within the same district as the Court which passed such decree, such Court shall send the same directly to the former Court. But, if the Court to which the decree is to be sent for execution is situate in a different district, the Court which passed it shall send it to the District Court of the district in which the decree is to be executed.

Procedure when Court desires that its own decree shall be executed by another. Court.

224. The Court sending a decree for execution under section 223 shall send

(*a*) a copy of the decree;

(*b*) a certificate setting forth that satisfaction of the decree has not been obtained by execution within the jurisdiction of the Court by which it was passed, or, where the decree has been executed in part, the extent to which satisfaction has been obtained and what part of the decree remains unexecuted; and

(*c*) a copy of any order for the execution of the decree, and, if no such order has been made, a certificate to that effect.

Court receiving copies of decree, &c., to file same without proof.

225. The Court to which a decree is so sent shall cause such copies and certificate to be filed, without any further proof of the decree or order for execution, or of the copies thereof, or of the jurisdiction of the Court which passed it, unless the former Court, for any special reasons to be recorded under the hand of the Judge, requires such proof.

Execution of decree or order by Court to which it is sent.

226. When such copies are so filed, the decree or order may, if the Court to which it is sent be the District Court, be executed by such Court or by any subordinate Court which it directs to execute the same.

Execution by High Court of decree transmitted by other Court.

227. If the Court to which the decree is sent for execution be a High Court, the decree shall be executed by such Court in the same manner as if it had been made by such Court in the exercise of its ordinary original civil jurisdiction.

Powers of Court in executing transmitted decree.

228. The Court executing a decree sent to it under this chapter shall have the same powers in executing such decree as if it had been passed by itself. All persons

persons disobeying or obstructing the execution of the decree shall be punishable by such Court in the same manner as if it had passed the decree. And its orders in executing such decree shall be subject to the same rules in respect of appeal as if the decree had been passed by itself.

Appeal from orders in executing such decrees.

229. A decree of any Court established by the authority of the Governor General in Council in the territories of any Foreign Prince or State, which cannot be executed within the jurisdiction of the Court by which it was made, may be executed in manner herein provided within the jurisdiction of any Court in British India.

Decrees of Courts established by Government of India in Native States.

B.—Of Application for Execution.

230. When the holder of a decree desires to enforce it, he shall apply to the Court which passed the decree or to the officer, if any, appointed in this behalf, or if the decree has been sent under the provisions hereinbefore contained to another Court, then to such Court or to the proper officer thereof.

Application for execution.

The Court may in its discretion refuse execution at the same time against the person and property of the judgment-debtor.

Where an application to execute a decree for the payment of money or delivery of other property has been made under this section and granted, no subsequent application to execute the same decree shall be granted after the expiration of twelve years from any of the following dates (namely) :—

(*a*) the date of the decree sought to be enforced or of the decree (if any) on appeal affirming the same, or

(*b*) where the decree or any subsequent order directs any payment of money, or the delivery of any property, to be made at a certain date—the date of the default in making the payment or delivering the property in respect of which the applicant seeks to enforce the decree.

Nothing in this section shall prevent the Court from

from granting an application for execution of a decree after the expiration of the said term of twelve years, where the judgment-debtor has, by fraud or force, prevented the execution of the decree at some time within twelve years immediately before the date of the application.

Notwithstanding anything herein contained, proceedings may be taken to enforce any decree within three years after the passing of this Code, unless when the period prescribed for taking such proceedings by the law in force immediately before the passing of this Code shall have expired before the completion of the said three years.

Application by joint decree-holder.

231. If a decree has been passed jointly in favour of more persons than one, any one or more of such persons, or his or their representatives, may apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the representative in interest of the deceased.

If the Court sees sufficient cause for allowing the decree to be executed on an application so made, it shall pass such order as it deems necessary for protecting the interests of the persons who have not joined in the application.

Application by transferee of decree.

232. If a decree be transferred by assignment in writing, or by operation of law, from the decree-holder to any other person, the transferee may apply for its execution to the Court which passed it; and, if that Court thinks fit, the decree may be executed in the same manner and subject to the same conditions as if the application were made by such decree-holder:

Provided as follows:—

(*a*) where the decree has been transferred by assignment, notice in writing of such application shall be given to the transferor and the judgment-debtor, and the decree shall not be executed until the Court has heard their objections (if any) to such execution:

(*b*) where

(*b*) where a decree for money against several persons has been transferred to one of them, it shall not be executed against the others.

233. Every transferee of a decree shall hold the same subject to the equities (if any) which the judgment-debtor might have enforced against the original decree-holder.

Transferee to hold subject to equities enforceable against original holder.

234. If a judgment-debtor dies before the decree has been fully executed, the holder of the decree may apply to the Court which passed it to execute the same against the legal representative of the deceased.

If judgment-debtor die before execution, application may be made against his representative.

Such representative shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Court executing the decree may, of its own motion or on the application of the decree-holder, compel the said representative to produce such accounts as it thinks fit.

235. The application for the execution of a decree shall be in writing, verified by the applicant or by some other person proved to the satisfaction of the Court to be acquainted with the facts of the case, and shall contain in a tabular form the following particulars (namely):—

Contents of application for execution of decree.

(*a*) the number of the suit;

(*b*) the names of the parties;

(*c*) the date of the decree;

(*d*) whether any appeal has been preferred from the decree;

(*e*) whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the decree;

(*f*) whether any and what previous applications have been made for execution of the decree and with what result;

(*g*) the

(*g*) the amount of the debt or compensation, with the interest, if any, due upon the decree, or other relief granted thereby;

(*h*) the amount of costs, if any, awarded;

(*i*) the name of the person against whom the enforcement of the decree is sought; and

(*j*) the mode in which the assistance of the Court is required, whether by the delivery of property specifically decreed, by the arrest and imprisonment of the person named in the application, or by the attachment of his property, or otherwise as the nature of the relief sought may require.

Application for attachment of moveable property to be accompanied with inventory.

236. Whenever an application is made for the attachment of any moveable property belonging to the judgment-debtor but not in his possession, the decree-holder shall annex to the application an inventory of the property to be attached, containing a reasonably accurate description of the same.

Further particulars when application is for attachment of immoveable property.

237. Whenever an application is made for the attachment of any immoveable property belonging to the judgment-debtor, it shall contain at the foot a description of the property sufficient to identify it, and also a specification of the judgment-debtor's share or interest therein to the best of the belief of the applicant and so far as he has been able to ascertain the same.

Every such description and specification shall be verified in manner hereinbefore provided for the verification of plaints.

When application must be accompanied by extract from Collector's register.

238. If the property be land registered in the Collector's office, the application for attachment shall be accompanied by an authenticated extract from the register of such office, specifying the persons registered as proprietors of, or as possessing any transferable interest in, the land or its revenue, or as liable to pay revenue for such land, and the shares of the registered proprietors.

C.—Of

C.—Of staying Execution.

239. The Court to which a decree has been sent for execution under this chapter shall, upon sufficient cause being shewn, stay the execution of such decree for a reasonable time, to enable the judgment-debtor to apply to the Court by which the decree was made, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by such Court of first instance or appellate Court if execution had been issued thereby, or if application for execution had been made thereto;

When Court may stay execution.

and in case the property or person of the judgment-debtor has been seized under an execution, the Court which issued the execution may order the restitution or discharge of such property or person pending the result of the application for such order.

240. Before passing an order under section 239 to stay execution, or for the restitution of property or the discharge of the judgment-debtor, the Court may require such security from, or impose such conditions upon, the judgment-debtor as it thinks fit.

Power to require security from, or impose conditions upon, judgment-debtor.

241. No discharge under section 239 of the property or person of a judgment-debtor shall prevent it or him from being retaken in execution of the decree sent for execution.

Liability of judgment-debtor discharged to be retaken.

242. Any order of the Court by which the decree was passed, or of such Court of appeal as aforesaid, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution.

Order of Court which passed decree or of appellate Court to be binding upon Court applied to.

243. If a suit be pending in any court against the holder of a decree of such Court, on the part of the person against whom the decree was passed, the Court may (if it think fit) stay execution on the decree, either absolutely or on such terms as it thinks fit, until the pending suit has been decided.

Stay of execution pending suit between decree-holder and judgment-debtor.

D.—Questions

D.—Questions for Court executing Decree.

Questions to be decided by Court executing decree.

244. The following questions shall be determined by order of the Court executing a decree and not by separate suit (namely)—

(*a*) questions regarding the amount of any mesne profits as to which the decree has directed inquiry;

(*b*) questions regarding the amount of any mesne profits or interest which the decree has made payable in respect of the subject-matter of a suit, between the date of its institution and the execution of the decree, or the expiration of three years from the date of the decree;

(*c*) any other questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree.

Nothing in this section shall be deemed to bar a separate suit for mesne profits accruing between the institution of the first suit and the execution of the decree therein, where such profits are not dealt with by such decree.

E.—Of the Mode of executing Decrees.

Procedure on receiving application for execution of decree.

245. The Court, on receiving an application for the execution of a decree, shall ascertain whether such of the requirements of sections 235, 236, 237 and 238 as may be applicable to the case have been complied with; and if they have not been complied with, the Court may reject the application, or may allow it to be amended then and there, or within a time fixed by the Court. If the application be not so amended, it shall be rejected.

Every amendment made under this section shall be attested by the signature of the Judge.

Procedure on admitting application.

When the application is admitted, the Court shall enter in the register of the suit a note of the application and the date on which it was made, and shall order execution of the decree according to the nature of the application:

Provided

Provided that, in the case of a decree for money, the value of the property attached shall, as nearly as may be, correspond with the amount for which the decree has been made.

246. If cross-decrees between the same parties for the payment of money be produced to the Court, execution shall be taken out only by the party who holds a decree for the larger sum, and for so much only as remains after deducting the smaller sum, and satisfaction for the smaller sum shall be entered on the decree for the larger sum as well as satisfaction on the decree for the smaller sum. Cross-decrees.

If the two sums be equal, satisfaction shall be entered upon both decrees.

Explanation I.—The decrees contemplated by this section are decrees capable of execution at the same time and by the same Court.

Explanation II.—This section applies where either party is an assignee of one of the decrees and as well in respect of judgment-debts due by the original assignor as in respect of judgment-debts due by the assignee himself.

Explanation III.—This section does not apply unless

the decree-holder in one of the suits in which the decrees have been made is the judgment-debtor in the other and each party fills the same character in both suits; and

the sums due under the decrees are definite.

Illustrations.

(*a*) A holds a decree against B for Rs. 1,000. B holds a decree against A for the payment of Rs. 1,000 in case A fails to deliver certain goods at a future day. B cannot treat his decree as a cross-decree under this section.

(*b*) A and B, co-plaintiffs, obtain a decree for Rs. 1,000 against C, and C obtains a decree for Rs. 1,000 against B. C cannot treat his decree as a cross-decree under this section.

(*c*) A obtains a decree against B for Rs. 1,000. C, who is a trustee for B, obtains a decree on behalf of B against A for Rs. 1,000. B cannot treat C's decree as a cross-decree under this section.

247. When

Cross-claims under same decree.

247. When two parties are entitled under the same decree to recover from each other sums of different amounts, the party entitled to the smaller sum shall not take out execution against the other party; but satisfaction for the smaller sum shall be entered on the decree.

When the amounts are equal, neither party shall take out execution, but satisfaction for each sum shall be entered on the decree.

Notice to show cause why decree should not be executed.

248. The Court shall issue a notice to the party against whom execution is applied for, requiring him to show cause, within a period to be fixed by the Court, why the decree should not be executed against him,

(*a*) if more than one year has elapsed between the date of the decree and the application for its execution, or

(*b*) if the enforcement of the decree be applied for against the legal representative of a party to the suit in which the decree was made:

Proviso.

Provided that no such notice shall be necessary

in consequence of more than one year having elapsed between the date of the decree and the application for execution, if the application be made within one year from the date of any decree passed on appeal from the decree sought to be executed, or of the last order against the party against whom execution is applied for, passed on any previous application for execution, or

in consequence of the application being against the legal representative of the judgment-debtor, if upon a previous application for execution against the same person the Court has ordered execution to issue against him.

Explanation.—In this section the phrase "the Court" means the Court by which the decree was passed, unless the decree has been sent to another Court for execution, in which case it means such other Court.

249. If

249. If the person to whom notice is issued under the last preceding section does not appear, or does not shew cause to the satisfaction of the Court why the decree should not be executed, the Court shall order the decree to be executed.

Procedure after issue of notice.

If he offers any objection to the enforcement of the decree, the Court shall consider such objection and pass such order as it thinks fit.

250. When the preliminary measures (if any) required by the foregoing provisions have been taken, the Court, unless it sees cause to the contrary, shall issue its warrant for the execution of the decree.

Warrant when to issue.

251. Such warrant shall be dated the day on which it is issued, signed by the Judge or such officer as the Court appoints in this behalf, sealed with the seal of the Court, and delivered to the proper officer to be executed.

Date, signature, seal and delivery.

And a day shall be specified in such warrant on or before which it must be executed, and the proper officer shall endorse thereon the day and manner in which it was executed, or, if it was not executed, the reason why it was not executed, and shall return it with such endorsement to the Court from which it issued.

252. If the decree be against a party as the legal representative of a deceased person, and the decree be for money to be paid out of the property of the deceased, it may be executed by the attachment and sale of any such property:

Decree against representative of deceased for money to be paid out of deceased's property.

If no such property remains in the possession of the judgment-debtor, and he fails to satisfy the Court that he has duly applied such property of the deceased as is proved to have come into his possession, the decree may be executed against the judgment-debtor to the extent of the property not duly applied by him, in the same manner as if the decree had been against him personally.

253. Whenever a person has, before the passing of a decree in an original suit, become liable as surety for the performance of the same or of any part thereof,

Decree against surety.

the

the decree may be executed against him to the extent to which he has rendered himself liable, in the same manner as a decree may be executed against a defendant:

Provided that such notice in writing as the Court in each case thinks sufficient has been given to the surety.

Decree for money.

254. Every decree or order directing a party to pay money, as compensation or costs, or as the alternative to some other relief granted by the decree or order, or otherwise, may be enforced by the imprisonment of the judgment-debtor, or by the attachment and sale of his property in manner hereinafter provided, or by both.

Decree for mesne profits or other matter, amount of which to be subsequently ascertained.

255. If the decree be for mesne profits or any other matter the amount of which in money is to be subsequently determined, the property of the judgment-debtor may, before the amount due from him under the decree has been ascertained, be attached as in the case of an ordinary decree for money.

Power to direct immediate execution of decree for money not exceeding Rs. 1,000.

256. When a decree is passed for a sum of money only, and the amount decreed does not exceed the sum of one thousand rupees, the Court may, when passing the decree, on the oral application of the decree-holder, order immediate execution thereof by the issue of a warrant directed either against the person of the judgment-debtor if he is within the local limits of the jurisdiction of the Court, or against his moveable property within the same limits.

Modes of paying money under decree.

257. All money payable under a decree shall be paid as follows (namely)—

(*a*) into the Court whose duty it is to execute the decree; or

(*b*) out of Court to the decree-holder; or

(*c*) otherwise as the Court which made the decree directs.

Agreement to give time to judgment-debtor.

257A. Every agreement to give time for the satisfaction of a judgment-debt shall be void unless it is made for consideration and with the sanction of the Court

Court which passed the decree, and such Court deems the consideration to be under the circumstances reasonable.

Every agreement for the satisfaction of a judgment-debt, which provides for the payment, directly or indirectly, of any sum in excess of the sum due or to accrue due under the decree, shall be void unless it is made with the like sanction.

Agreement for satisfaction of judgment-debt.

Any sum paid in contravention of the provisions of this section shall be applied to the satisfaction of the judgment-debt; and the surplus, if any, shall be recoverable by the judgment-debtor.

258. If any money payable under a decree is paid out of Court, or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, or if any payment is made in pursuance of an agreement of the nature mentioned in section 257 A, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree.

Payment to decree-holder.

The judgment-debtor also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decree-holder to shew cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after due service of such notice, the decree-holder fails to appear on the day fixed, or having appeared fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.

No such payment or adjustment shall be recognized by any Court unless it has been certified as aforesaid.

259. If the decree be for any specific moveable, or for any share in a specific moveable, or for the recovery of a wife, it may be enforced by the seizure, if practicable, of the moveable or share, and by the delivery thereof to the party to whom it has been adjudged, or to such person as he appoints to receive delivery on his behalf, or by the imprisonment of the judgment-debtor,

Decrees for specific moveables, or recovery of wives.

judgment-debtor, or by attaching his property or by both imprisonment and attachment if necessary.

When any attachment under this section has remained in force for six months, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, such property may be sold, and out of the proceeds the Court may award to the decree-holder, in cases where any amount has been fixed under section 208, such amount, and, in other cases, such compensation, as it thinks fit, and shall pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of six months from the date of the attachment, no application to have the property sold has been made, or, if made, has been refused, the attachment shall cease to exist.

Decree for specific performance or restitution of conjugal rights.

260. When the party against whom a decree for the specific performance of a contract, or for restitution of conjugal rights or for the performance of or abstention from any other particular act, has been made, has had an opportunity of obeying the decree or injunction and has wilfully failed to obey it, the decree may be enforced by his imprisonment, or by the attachment of his property, or by both.

When any attachment under this section has remained in force for one year, if the judgment-debtor has not obeyed the decree and the decree-holder has applied to have the attached property sold, the property may be sold; and out of the proceeds the Court may award to the decree-holder such compensation as it thinks fit, and may pay the balance, if any, to the judgment-debtor on his application.

If the judgment-debtor has obeyed the decree and paid all costs of executing the same which he is bound to pay, or if, at the end of one year from the date of the attachment, no application to have the property sold has been made and granted, the attachment shall cease to exist.

261. If

261. If the decree be for the execution of a conveyance, or for the endorsement of a negotiable instrument, and the judgment-debtor neglects or refuses to comply with the decree, the decree-holder may prepare the draft of a conveyance or endorsement in accordance with the terms of the decree, and deliver the same to the Court.

Decree for execution of conveyances, or endorsement of negotiable instruments.

The Court shall thereupon cause the draft to be served on the judgment-debtor in manner hereinbefore provided for serving a summons, together with a notice in writing stating that his objections, if any, thereto shall be made within such time (mentioning it) as the Court fixes in this behalf.

The decree-holder may also tender a duplicate of the draft to the Court for execution, upon the proper stamp-paper if a stamp is required by law.

On proof of such service, the Court, or such officer as it appoints in this behalf, shall execute the duplicate so tendered, or may, if necessary, alter the same, so as to bring it into accordance with the terms of the decree and execute the duplicate so altered:

Provided that, if any party object to the draft so served as aforesaid, his objections shall, within the time so fixed, be stated in writing and argued before the Court, and the Court shall thereupon pass such order as it thinks fit, and execute, or alter and execute, the duplicate in accordance therewith.

262. The execution of a conveyance, or the endorsement of a negotiable instrument, by the Court under the last preceding section may be in the following form: "*C. D.*, Judge of the Court of (*or as the case may be*), for *A. B.*, in a suit by *E. F.*, against *A. B.*," or in such other form as the High Court may from time to time prescribe, and shall have the same effect as the execution of the conveyance or endorsement of the instrument by the party ordered to execute or endorse the same.

Form and effect of execution of conveyance by Court.

263. If the decree be for the delivery of any immoveable property, possession thereof shall be delivered over to the party to whom it has been adjudged, or

Decree for immoveable property.

or to such person as he appoints to receive delivery on his behalf, and, if need be, by removing any person bound by the decree who refuses to vacate the property.

Delivery of immoveable property when in occupancy of tenant.

264. If the decree be for the delivery of any immoveable property in the occupancy of a tenant or other person entitled to occupy the same and not bound by the decree to relinquish such occupancy, the Court shall order delivery to be made by affixing a copy of the warrant in some conspicuous place on the property, and proclaiming to the occupant by beat of drum, or in such other mode as is customary, at some convenient place, the substance of the decree in regard to the property:

Provided that, if the occupant can be found, a notice in writing containing such substance shall be served upon him, and in such case no proclamation need be made.

Partition of estate or separation of share.

265. If the decree be for the partition or for the separate possession of a share of an undivided estate paying revenue to Government, the partition of the estate or the separation of the share shall be made by the Collector and according to the law, if any, for the time being in force for the partition, or the separate possession of shares, of such estates.

F.—Of Attachment of Property.

Property liable to attachment and sale in execution of decree.

266. The following property is liable to attachment and sale in execution of a decree (namely), lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundís, promissory-notes, Government-securities, bonds or other securities for money, debts, shares in the capital or joint stock of any railway, banking or other public Company or Corporation, and, except as hereinafter mentioned, all other saleable property, moveable or immoveable, belonging to the judgment-debtor or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, and whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided

Provided that the following particulars shall not be liable to such attachment or sale (namely)—

(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children;

(*b*) tools of artizans, and, where the judgment-debtor is an agriculturist, his implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable him to earn his livelihood as such;

(*c*) the materials of houses and other buildings belonging to and occupied by agriculturists;

(*d*) books of account;

(*e*) mere rights to sue for damages;

(*f*) any right of personal service;

(*g*) stipends and gratuities allowed to military and civil pensioners of Government, and political pensions;

(*h*) the salary of a public officer or of any servant of a Railway Company, when such salary does not exceed twenty rupees *per mensem*, and one moiety of the salary of any such officer or servant when his salary exceeds that amount;

(*i*) the pay and allowances of persons to whom the Native Articles of War apply;

(*j*) the wages of labourers and domestic servants;

(*k*) an expectancy of succession by survivorship or other merely contingent or possible right or interest;

(*l*) a right to future maintenance.

Explanation.—The particulars mentioned in clauses (*g*), (*h*), (*i*) and (*j*) are exempt from attachment or sale whether before or after they are actually payable:

Provided also that nothing in this section shall be deemed

(*a*) to exempt the materials of houses and other buildings

buildings from attachment or sale in execution of decrees for rent, or

(*b*) to affect the Army Act, 1881, or any similar law for the time being in force.

Power to summon and examine persons as to property liable to be seized.

267. The Court may, of its own motion or on the application of the decree-holder, summon any person whom it thinks necessary, and examine him in respect to any property liable to be seized in satisfaction of the decree, and may require the person summoned to produce any document in his possession or power relating to such property, and, before issuing the summons of its own motion, shall declare the person on whose behalf the summons is so issued.

Attachment of debt, share and other property not in possession of judgment-debtor.

268. In the case of (*a*) a debt not secured by a negotiable instrument, (*b*) a share in the capital of any public Company or Corporation, (*c*) other moveable property not in the possession of the judgment-debtor, except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,

(*a*) in the case of the debt, the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Court;

(*b*) in the case of the share, the person in whose name the share may be standing, from transferring the same or receiving any dividend thereon;

(*c*) in the case of the other moveable property except as aforesaid, the person in possession of the same from giving it over to the judgment-debtor.

A copy of such order shall be fixed up in some conspicuous part of the court-house, and another copy of the same shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Company or Corporation, and in the case of the other moveable property (except as aforesaid), to the person in possession of the same.

A debtor prohibited under clause (*a*) of this section may pay the amount of his debt into court, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

In

In the case of the salary of a public officer or the servant of a Railway Company, the attachment shall be made by a written order requiring the officer whose duty it is to disburse the salary to withhold every month such portion as the Court may direct, until the further orders of the Court.

A copy of every such order shall be fixed up in a conspicuous part of the court-house and shall be served on the officer so required.

Every such officer may from time to time pay into court any portion so withheld, and such payment shall discharge the Government or the Railway Company, as the case may be, as effectually as payment to the judgment-debtor.

Attachment of moveable property in possession of judgment-debtor.

269. If the property be moveable property in the possession of the judgment-debtor, other than the property mentioned in the first proviso to section 266, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Proviso.

Provided that when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody will exceed its value, the proper officer may sell it at once.

Power to make rules for maintenance of attached live-stock.

The Local Government may, from time to time, make rules for the maintenance and custody, while under attachment, of live-stock and other moveable property, and the officer attaching property under this section shall, notwithstanding the provisions of the former part of this section, act in accordance with such rules.

Attachment of negotiable instruments.

270. If the property be a negotiable instrument not deposited in a court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into court and held subject to the further orders of the Court.

Seizure of property in building.

271. No person executing any process under this Code directing or authorizing seizure of moveable property

perty shall enter any dwelling-house after sunset and before sunrise, or shall break open any outer door of a dwelling-house. But, when any such person has duly gained access to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe any such property to be:

Seizure of property in zanánás.

Provided that, if the room be in the actual occupancy of a woman, who, according to the customs of the country does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing a reasonable time for such woman to withdraw, and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of seizing the property, using at the same time every precaution, consistent with these provisions, to prevent its clandestine removal.

Attachment of property deposited in court or with Government officer.

272. If the property be deposited in, or be in the custody of, any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Court from which the notice issues:

Proviso.

Provided that, if such property is deposited in, or is in the custody of, a court, any question of title or priority arising between the decree-holder and any other person, not being the judgment-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such court.

Attachment of decree for money.

273. If the property be a decree for money passed by the Court which passed the decree sought to be executed, the attachment shall be made by an order of the Court directing the proceeds of the former decree to be applied in satisfaction of the latter decree.

If the property be a decree for money passed by any other Court, the attachment shall be made by a notice in writing to such Court under the hand of the Judge of the Court which passed the decree sought to

to be executed, requesting the former Court to stay the execution of its decree until such notice is cancelled by the Court from which it was sent. The Court receiving such notice shall stay execution accordingly, unless and until

(*a*) the Court which passed the decree sought to be executed cancels the notice, or

(*b*) the holder of the decree sought to be executed applies to the Court receiving such notice to execute its own decree.

On receiving such application, the Court shall proceed to execute the decree and apply the proceeds in satisfaction of the decree sought to be executed.

Attachment of other decrees.

In the case of all other decrees the attachment shall be made by a notice in writing, under the hand of the Judge of the Court which passed the decree sought to be executed, to the holder of the decree sought to be attached, prohibiting him from transferring or charging the same in any way; and, when such decree has been passed by any other Court, also by sending to such Court a like notice in writing to abstain from executing the decree sought to be attached until such notice is cancelled by the Court from which it was sent. Every Court receiving such notice shall give effect to the same until it is so cancelled.

Decree-holders to give information.

The holder of any decree attached under this section shall be bound to give the Court executing the same such information and aid as may reasonably be required.

Attachment of immoveable property.

274. If the property be immoveable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from receiving the same from him by purchase, gift or otherwise.

The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be fixed up in a conspicuous part of the property and of the court-house.

When

When the property is land paying revenue to Government, a copy of the order shall also be fixed up in the office of the Collector of the District in which the land is situate.

Order for withdrawal of attachment after satisfaction of decree.

275. If the amount decreed with costs and all charges and expenses resulting from the attachment of any property be paid into court, or if satisfaction of the decree be otherwise made through the Court, or if the decree is set aside or reversed, an order shall be issued, on the application of any person interested in the property, for the withdrawal of the attachment.

Private alienation of property after attachment to be void.

276. When an attachment has been made by actual seizure or by written order duly intimated and made known in manner aforesaid, any private alienation of the property attached, whether by sale, gift, mortgage or otherwise, and any payment of the debt or dividend, or a delivery of the share, to the judgment-debtor during the continuance of the attachment, shall be void as against all claims enforceable under the attachment.

Court may direct coin or currency-notes attached to be paid to party entitled.

277. If the property attached is coin or currency-notes, the Court may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the decree, be paid over to the party entitled under the decree to receive the same.

Investigation of claims to, and objections to attachment of, attached property.

278. If any claim be preferred to, or any objection be made to the attachment of, any property attached in execution of a decree, on the ground that such property is not liable to such attachment, the Court shall proceed to investigate the claim or objection with the like power as regards the examination of the claimant or objector, and in all other respects, as if he was a party to the suit:

Provided that no such investigation shall be made where the Court considers that the claim or objection was designedly or unnecessarily delayed.

Postponement of sale.

If the property to which the claim or objection applies has been advertised for sale, the Court ordering the

the sale may postpone it pending the investigation of the claim or objection.

279. The claimant or objector must adduce evidence to show that at the date of the attachment he had some interest in, or was possessed of, the property attached.

Evidence to be adduced by claimant.

280. If upon the said investigation the Court is satisfied that, for the reason stated in the claim or objection, such property was not, when attached, in the possession of the judgment-debtor or of some person in trust for him, or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the judgment-debtor at such time, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or partly on his own account and partly on account of some other person, the Court shall pass an order for releasing the property, wholly or to such extent as it thinks fit, from attachment.

Release of property from attachment.

281. If the Court is satisfied that the property was, at the time it was attached, in possession of the judgment-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Court shall disallow the claim.

Disallowance of claim to release of property attached.

282. If the Court is satisfied that the property is subject to a mortgage or lien in favour of some person not in possession, and thinks fit to continue the attachment, it may do so, subject to such mortgage or lien.

Continuance of attachment subject to claim of incumbrancer.

283. The party against whom an order under section 280, 281 or 282 is passed may institute a suit to establish the right which he claims to the property in dispute, but, subject to the result of such suit, if any, the order shall be conclusive.

Saving of suits to establish right to attached property.

284. Any Court may order that any property which has been attached, or such portion thereof as may seem necessary to satisfy the decree, shall be sold, and

Power to order property attached to be sold and proceeds

to be paid to person entitled.

and that the proceeds of such sale, or a sufficient portion thereof, shall be paid to the party entitled under the decree to receive the same.

Property attached in execution of decrees of several Courts.

285. Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, the Court which shall receive or realize such property and shall determine any claim thereto and any objection to the attachment thereof, shall be the Court of highest grade, or, where there is no difference in grade between such Courts, the Court under whose decree the property was first attached.

G.—Of Sale and Delivery of Property.

(*a*) *General Rules.*

Sales by whom conducted and how made.

286. Sales in execution of decrees shall be conducted by an officer of the Court or by any other person whom the Court may appoint, and, except as provided in section 296, shall be made by public auction in manner hereinafter mentioned.

Proclamation of sales by public auction.

287. When any property is ordered to be sold by public auction in execution of a decree, the Court shall cause a proclamation of the intended sale to be made in the language of such Court. Such proclamation shall state the time and place of sale, and shall specify as fairly and accurately as possible—

(*a*) the property to be sold;

(*b*) the revenue assessed upon the estate or part of the estate, when the property to be sold is an interest in an estate or a part of an estate paying revenue to Government;

(*c*) any incumbrance to which the property is liable;

(*d*) the amount for the recovery of which the sale is ordered, and

(*e*) every other thing which the Court considers material for the purchaser to know in order to judge of the nature and value of the property.

For the purpose of ascertaining the matters so to be specified, the Court may summon any person whom it

it thinks necessary, and examine him in respect to any such matters, and require him to produce any document in his possession or power relating thereto.

Rules to be made by High Court.

The High Court shall, as soon as may be after this Code comes into force, make rules for the guidance of the Courts in exercise of their duties under this section. The High Court may, from time to time, alter any rules so made. All such rules shall be published in the local official Gazette and shall thereupon have the force of law. As regards his own Court and the Court of Small Causes at Rangoon, the Recorder of Rangoon shall be deemed to be a "High Court" within the meaning of this paragraph.

Nothing in this section shall apply to cases in which the execution of the decree has been transferred to the Collector.

Indemnity of Judges, &c.

288. No Judge or other public officer shall be answerable for any error, misstatement or omission in any proclamation under section 287, unless the same has been committed or made dishonestly.

Mode of making proclamation.

289. The proclamation shall be made, in manner prescribed by section 274, on the spot where the property is attached, and a copy thereof shall then be fixed up in the court-house and, in the case of land paying revenue to Government, also in the Collector's office.

If the Court so direct, such proclamation shall also be published in the local official Gazette and in some local newspaper, and the costs of such publication shall be deemed to be costs of the sale.

Time of sale.

290. Except in the case of property mentioned in the proviso to section 269, no sale under this chapter shall, without the consent in writing of the judgment-debtor, take place until after the expiration of at least thirty days in the case of immoveable property, and of at least fifteen days in the case of moveable property, calculated from the date on which the copy of the proclamation has been fixed up in the court-house of the Judge ordering the sale.

291. The

Power to adjourn sale.

291. The Court may in its discretion adjourn any sale under this chapter (other than a sale by the Collector) to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment: provided that when the sale is made in, or within the precincts of, the court-house, no such adjournment shall be made without the leave of the Court. Whenever a sale is adjourned under this section for a longer period than seven days, a fresh proclamation under section 289 shall be made, unless the judgment-debtor consents to waive it. Every such sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to such officer, or proof is given to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale.

Stoppage of sale on tender of debt and costs, or on proof of payment.

Officers concerned in execution-sales not to bid for or buy property sold.

292. No officer having any duty to perform in connection with any sale under this chapter shall either directly or indirectly bid for, acquire or attempt to acquire, any interest in any property sold at such sale.

Defaulting purchaser answerable for loss by re-sale.

293. The deficiency of price (if any) which may happen on a re-sale under this Code by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Court by the officer holding the sale,

and shall, at the instance of either the judgment-creditor or the judgment-debtor, be recoverable from the defaulter under the rules contained in this chapter for the execution of a decree for money.

Decree-holder not to bid for or buy property without permission.

294. No holder of a decree in execution of which property is sold shall, without the express permission of the Court, bid for or purchase the property.

If decree-holder purchase, amount of decree may be taken as payment.

When a decree-holder purchases with such permission, the purchase-money and the amount due on the decree may, if he so desires, be set-off against one another, and the Court executing the decree shall enter up satisfaction of the decree in whole or in part accordingly.

When

When a decree-holder purchases, by himself or through another person, without such permission, the Court may, if it thinks fit, on the application of the judgment-debtor or any other person interested in the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the decree-holder.

Proceeds of execution-sale to be divided rateably among decree-hold-

295. Whenever assets are realized by sale or otherwise in execution of a decree, and more persons than one have, prior to the realization, applied to the Court by which such assets are held for execution of decrees for money against the same judgment-debtor, and have not obtained satisfaction thereof, the assets, after deducting the costs of the realization, shall be divided rateably among all such persons:

Provided as follows:—

Proviso where property is sold subject to mortgage.

(*a*) when any property is sold subject to a mortgage or charge, the mortgagee or incumbrancer shall not as such be entitled to share in any surplus arising from such sale:

(*b*) when any property is liable to be sold in execution of a decree is subject to a mortgage or charge, the Court may, with the assent of the mortgagee or incumbrancer, order that the property be sold free from the mortgage or charge, giving to the mortgagee or incumbrancer the same right against the proceeds of the sale as he had against the property sold:

Proviso.

(*c*) when immoveable property is sold in execution of a decree ordering its sale for the discharge of an incumbrance thereon, the proceeds of sale shall be applied—

first, in defraying the expenses of the sale;

secondly, in discharging the interest and principal-money due on the incumbrance;

thirdly, in discharging the interest and principal-moneys due on subsequent incumbrances (if any); and

fourthly, rateably among the holders of decrees

for

for money against the judgment-debtor, who have, prior to the sale of the said property, applied to the Court which made the decree ordering such sale for execution of such decrees and have not obtained satisfaction thereof.

If all or any of such assets be paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets.

Nothing in this section affects any right of the Government.

(*b*) *Rules as to Moveable Property.*

Rules as to negotiable instruments and shares in public Companies.

296. If the property to be sold be a negotiable instrument or a share in any public Company or Corporation, the Court may, instead of directing the sale to be made by public auction, authorize the sale of such instrument or share through a broker at the market-rate of the day.

Payment for other moveable property sold.

297. In the case of other moveable property, the price of each lot shall be paid for at the time of sale, or as soon after as the officer holding the sale directs, and, in default of payment, the property shall forthwith be again put up and sold.

On payment of the purchase-money, the officer holding the sale shall grant a receipt for the same, and the sale shall become absolute.

Irregularity not to vitiate sale of moveable property, but any person injured may sue.

298. No irregularity in publishing or conducting the sale of moveable property shall vitiate the sale; but any person sustaining any injury by reason of such irregularity at the hand of any other person may institute a suit against him for compensation, or (if such other person be the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

Delivery of moveable property actually seized.

299. When the property sold is a negotiable instrument or other moveable property, of which actual seizure has been made, the property shall be delivered to the purchaser.

Delivery of

300. When the property sold is any moveable property

perty to which the judgment-debtor is entitled subject to the possession of some other person, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

moveable property to which judgment-debtor entitled subject to lien.

301. When the property sold is a debt not secured by a negotiable instrument, or is a share in any public Company, the delivery thereof shall be made by a written order of the Court prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser, or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Company from permitting any such transfer or making any such payment to any person except the purchaser.

Delivery of debts and of shares in public Companies.

302. If the endorsement or conveyance of the party in whose name a negotiable instrument or a share in any public Company is standing is required to transfer such instrument or share, the Judge may endorse the instrument or the certificate of the share, or may execute such other document as may be necessary.

Transfer of negotiable instruments and shares.

The endorsement or execution shall be in the following form or to the like effect:—"*A. B.*, by *C. D.*, Judge of the Court of (*or as the case may be*); in a suit by *E. F.* against *A. B.*"

Until the transfer of such instrument or share, the Court may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any endorsement made, or document executed, or receipt signed, as aforesaid, shall be as valid and effectual for all purposes as if the same had been made or executed or signed by the party himself.

303. In the case of any moveable property not hereinbefore

Vesting order

in case of other property.

hereinbefore provided for, the Court may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

(*c*) *Rules as to Immoveable Property.*

What courts may order sales of land.

304. Sales of immoveable property in execution of a decree may be ordered by any Court other than aCourt of Small Causes.

Postponement of sale of land to enable defendant to raise amount of decree.

305. When an order for the sale of immoveable property has been made, if the judgment-debtor can satisfy the Court that there is reason to believe that the amount of the decree may be raised by mortgage or lease or private sale of such property, or some part thereof, or of any other immoveable property of the judgment-debtor, the Court may on his application postpone the sale of property comprised in the order for sale, for such period as it thinks proper to enable him to raise the amount.

Certificate to judgment-debtor.

In such case the Court shall grant a certificate to the judgment-debtor authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 276, to make the proposed mortgage, lease or sale: provided that all moneys payable under such mortgage, lease or sale shall be paid into court and not to the judgment-debtor:

Provided also that no mortgage, lease or sale under this section shall become absolute until it has been confirmed by the Court.

Deposit by purchaser of immoveable property.

306. On every sale of immoveable property under this chapter, the person declared to be the purchaser shall pay immediately after such declaration a deposit of twenty-five per centum on the amount of his purchase-money to the officer conducting the sale, and, in default of such deposit, the property shall forthwith be put up again and sold.

Time for payment in full.

307. The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day, or, if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.

308. In

308. In default of payment within the period mentioned in the last preceding section, the deposit, after defraying the expenses of the sale, shall be forfeited to Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

Procedure in default of payment.

309. Every re-sale of immoveable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh notification in the manner and for the period hereinbefore prescribed for the sale.

Notification on re-sale of immoveable property.

310. When the property sold in execution of a decree is a share of undivided immoveable property, and two or more persons, of whom one is a co-sharer, respectively advance the same sum at any bidding at such sale, such bidding shall be deemed to be the bidding of the co-sharer.

Co-sharer of share of undivided estate sold in execution to have preference in bidding.

311. The decree-holder, or any person whose immoveable property has been sold under this chapter, may apply to the Court to set aside the sale on the ground of a material irregularity in publishing or conducting it;

Application to set aside sale of land on ground of irregularity.

but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity.

312. If no such application as is mentioned in the last preceding section be made, or if such application be made and the objection be disallowed, the Court shall pass an order confirming the sale as regards the parties to the suit and the purchaser.

Effect of objection being disallowed and

If such application be made, and if the objection be allowed, the Court shall pass an order setting aside the sale.

of its being allowed.

No suit to set aside, on the ground of such irregularity, an order passed under this section shall be brought by the party against whom such order has been made.

313. The

Application to set aside sale on ground of judgment-debtor having no saleable interest.

313. The purchaser at any such sale may apply to the Court to set aside the sale, on the ground that the person whose property purported to be sold had no saleable interest therein, and the Court may make such order as it thinks fit: provided that no order to set aside a sale shall be made, unless the judgment-debtor and the decree-holder have had opportunity of being heard against such order.

Confirmation of sale.

314. No sale of immoveable property in execution of a decree shall become absolute until it has been confirmed by the Court.

If sale set aside, price to be returned to purchaser.

315. When a sale of immoveable property is set aside under section 312 or 313,

or when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold and the purchaser is for that reason deprived of it,

the purchaser shall be entitled to receive back his purchase-money (with or without interest as the Court may direct) from any person to whom the purchase-money has been paid.

The re-payment of the said purchase-money and of the interest (if any) allowed by the Court may be enforced against such person under the rules provided by this Code for the execution of a decree for money.

Certificate to purchaser of immoveable property.

316. When a sale of immoveable property has become absolute in manner aforesaid, the Court shall grant a certificate stating the property sold and the name of the person who at the time of sale is declared to be the purchaser. Such certificate shall bear the date of the confirmation of the sale; and, so far as regards the parties to the suit and persons claiming through or under them, the title to the property sold shall vest in the purchaser from the date of such certificate and not before: provided that the decree under which the sale took place was still subsisting at that date.

Bar to suit against purchaser buying benámí.

317. No suit shall be maintained against the certified purchaser on the ground that the purchase was made

made on behalf of any other person, or on behalf of some one through whom such other person claims.

Nothing in this section shall bar a suit to obtain a declaration that the name of the certified purchaser was inserted in the certificate fraudulently or without the consent of the real purchaser.

Delivery of immoveable property in occupancy of judgment-debtor.

318. When the property sold is in the occupancy of the judgment-debtor or of some person on his behalf, or of some person claiming under a title created by the judgment-debtor subsequently to the attachment of such property, and a certificate in respect thereof has been granted under section 316, the Court shall, on application by the purchaser, order delivery to be made by putting the purchaser or any person whom he may appoint to receive delivery on his behalf in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

Delivery of immoveable property in occupancy of tenant.

319. When the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under section 316, the Court shall order delivery thereof to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or in such other mode as may be customary, at some convenient place, that the interest of the judgment-debtor has been transferred to the purchaser.

Power to prescribe rules for transferring to Collector execution of certain decrees.

320. The Local Government may, with the sanction of the Governor General in Council, declare, by notification in the official Gazette, that in any local area the execution of decrees in cases in which a Court has ordered any immoveable property to be sold, or the execution of any particular kind of such decrees, or the execution of decrees ordering the sale of any particular kind of, or interest in, immoveable property, shall be transferred to the Collector, and rescind or modify any such declaration.

Power to prescribe rules as to

The Local Government may also, notwithstanding anything hereinbefore contained, from time to time prescribe

transmission, execution and re-transmission of decrees.

prescribe rules for the transmission of the decree from the Court to the Collector, and for regulating the procedure of the Collector and his subordinates in executing the same, and for re-transmitting the decree from the Collector to the Court.

Power of Collector when execution of decree is so transferred.

321. When the execution of a decree has been so transferred, the Collector may—

(*a*) proceed as the Court would proceed under section 305; or

(*b*) raise the amount of the decree by letting in perpetuity, or for a term, on payment of a premium, or by mortgaging, the whole or any part of the property ordered to be sold; or

(*c*) sell the property ordered to be sold or so much thereof as may be necessary.

Procedure of Collector when execution of decree so transferred.

322. When the execution of a decree, not being a decree ordering the sale of immoveable property in pursuance of a contract specifically affecting the same, but being a decree for money in satisfaction of which the Court has ordered the sale of immoveable property, has been so transferred, the Collector, if, after such enquiry as he thinks necessary, he has reason to believe that all the liabilities of the judgment-debtor can be discharged without a sale of the whole of his available immoveable property, may proceed as hereinafter provided.

Notice to be given to decree-holders and to persons having claims on property.

322A. In the case mentioned in section 322, the Collector shall publish a notice calling upon—

(*a*) every person holding a decree for money against the judgment-debtor capable of execution by sale of his immoveable property, and which such decree-holder desires to have so executed, and every holder of a decree for money in execution of which proceedings for the sale of such property are pending, to produce before the Collector a copy of the decree, and a certificate from the Court which passed or is executing the same, declaring the amount recoverable thereunder;

(*b*) every person having any claim on the said property, to submit to the Collector a statement of such

such claim, and to produce the documents, if any, by which it is evidenced.

Such notice shall be in the language of the district, and shall allow a period of sixty days from the date of its publication for compliance therewith. It shall be published by being posted in the court-house of the Court which made the original order under section 304, and at such other places (if any) as the Collector thinks fit. Where the address of any such decree-holder or claimant is known, a copy of the notice shall be sent to him by post or otherwise.

Amount of money-decrees to be ascertained, and immoveable property available for their satisfaction.

322B. Upon the expiration of the said period the Collector shall appoint a day for hearing any representations which the judgment-debtor and the decree-holders or claimants (if any) may desire to make, and for holding such enquiry as he may deem necessary for informing himself as to the nature and extent of such decrees and claims and of the judgment-debtor's immoveable property, and may, from time to time, adjourn such hearing and enquiry.

If there be no dispute as to the fact or extent of the liability of the judgment-debtor to any of the decrees or claims of which the Collector is informed, or as to the relative priorities of such decrees or claims, or as to the liability of any such property for the satisfaction of such decrees or claims, the Collector shall draw up a statement, specifying the amount to be recovered for the discharge of such decrees, the order in which such decrees and claims are to be satisfied, and the immoveable property available for that purpose.

If any such dispute arises, the Collector shall refer the same, with a statement thereof and his own opinion thereon, to the Court which made the original order under section 304, and shall, pending the reference, stay proceedings relating to the subject thereof. The Court shall dispose of the dispute if the matter thereof be within its jurisdiction, or transmit the case to a competent Court for disposal, and the final decision shall be communicated to the Collector. The

Collector

Collector shall then draw up a statement as above provided in accordance with such decision.

When District Court may issue notices and hold inquiry.

322C. The Collector may, instead of himself issuing the notices and holding the enquiry required by sections 322A and 322B, draw up a statement specifying the circumstances of the judgment-debtor and of his immoveable property so far as they are known to the Collector or appear in the records of his office, and forward such statement to the District Court; and such Court shall thereupon issue the notices, hold the inquiry and draw up the statement required by sections 322A and 322B, and transmit such statement to the Collector.

Effect of decision of Court as to dispute arising under section 322B or 322C.

322D. The decision by the Court of any dispute arising under section 322B or section 322C shall, as between the parties thereto, have the force of, and be appealable as, a decree.

Scheme for liquidation of money-decrees.

323. Whenever the amount to be recovered and the property available have been determined as provided in section 322B or 322C, the Collector may—

(1) if it appears that the amount cannot be recovered without the sale of the whole of the property available, proceed to sell such property; or if it appears that the amount with interest (if any) in accordance with the decree, and, when not decreed, with interest (if any) at such rate as he thinks reasonable, may be recovered without such sale,

(2) raise such amount and interest (notwithstanding any order under section 304),

(*a*) by letting in perpetuity or for a term, on payment of a premium, the whole or any part of the said property; or

(*b*) by mortgaging the whole or any part of such property; or

(*c*) by selling part of such property; or

(*d*) by letting on farm, or managing by himself or another, the whole or any part of such property for any term not exceeding twenty years from the date of the order of sale; or

(*e*) partly

(*e*) partly by one of such modes, and partly by another or others of such modes.

(3) For the purpose of managing under this section the whole or any part of such property, the Collector may exercise all the powers of its owner.

(4) For the purpose of improving the saleable value of the property available or any part thereof, or rendering it more suitable for letting or managing, or for preserving the property from sale in satisfaction of an incumbrance, the Collector may discharge the claim of any incumbrancer which has become payable, or compound the claim of any incumbrancer whether it has become payable or not, and, for the purpose of providing funds to effect such discharge or composition, may mortgage, let or sell any portion of the property which he deems sufficient. If any dispute arises as to the amount due on any incumbrance with which the Collector proposes to deal under this paragraph, he may institute a suit in the proper Court, either in his own name or the name of the judgment-debtor, to have an account taken, or he may agree to refer such dispute to the decision of two arbitrators, one to be chosen by each party, or of an umpire to be named by such arbitrators.

In proceeding under paragraphs (2), (3) and (4) of this section, the Collector shall be subject to such rules consistent with this Act as may, from time to time, be made in this behalf by the Chief Controlling Revenue-authority.

Recovery of balance, if any, after letting or management.

324. If, on the expiration of the letting or management under section 323, the amount to be recovered has not been realized, the Collector shall notify the fact in writing to the judgment-debtor or his representative in interest, stating at the same time that, if the balance necessary to make up the said amount is not paid to the Collector within six weeks of the date of such notice, he will proceed to sell the whole or a sufficient part of the said property; and, if on the expiration of the said six weeks the said balance is not so paid, the Collector shall sell such property or part accordingly.

324A. The

Collector to render accounts to civil Court.

324A. The Collector shall, from time to time, render to the Court which made the original order under section 304 an account of all monies which come to his hands and of all charges incurred by him in the exercise and performance of the powers and duties conferred and imposed on him under the provisions of this chapter, and shall hold the balance at the disposal of the Court.

Such charges shall include all debts and liabilities from time to time due to the Government in respect of the property or any part thereof, the rent (if any) from time to time due to a superior holder in respect of such property or part, and (if the Collector so directs) the expenses of witnesses summoned by him.

Application of balance.

Such balance shall be applied by the Court as follows :—

firstly, in providing for the maintenance of such members of the judgment-debtor's family (if any) as are entitled to be maintained out of the income of the property, to such amount in the case of each member as the Court thinks fit; and

secondly, where the Collector has proceeded under section 321, in satisfaction of the original decree in execution of which the Court ordered the sale of immoveable property or otherwise as the Court may under section 295 direct; or

thirdly, where the Collector has proceeded under section 322, in keeping down the interest on incumbrances on the property, and (when the judgment-debtor has no other sufficient means of subsistence) in providing for his subsistence to such amount as the Court thinks fit; and in discharging rateably the claims of the original decree-holder and any other decree-holders who have complied with the said notice, and whose claims were included in the amount ordered to be recovered;

and no other holder of a decree for money shall be entitled to be paid out of such property or balance until the decree-holders who have obtained such order have been satisfied;

and

and the residue, if any, shall be paid to the judgment-debtor or such other person, if any, as the Court directs.

325. When the Collector sells any property under this chapter, he shall put it up to public auction, in one or more lots as he thinks fit, and may— Sales how to be conducted.

(*a*) fix a reasonable reserved price for each lot;

(*b*) adjourn the sale for a reasonable time, whenever he deems the adjournment necessary for the purpose of obtaining a fair price for the property, recording his reasons for such adjournment;

(*c*) buy in the property offered for sale, and re-sell the same by public auction or private contract, as he thinks fit.

325A. So long as the Collector can exercise or perform in respect of the judgment-debtor's immoveable property, or any part thereof, any of the powers or duties conferred or imposed on him by sections 322 to 325 (both inclusive), the judgment-debtor or his representative in interest shall be incompetent to mortgage, charge, lease or alienate such property or part except with the written permission of the Collector, nor shall any civil Court issue any process against such property or part in execution of a decree for money. Restrictions as to alienation by judgment-debtor or his representative, and prosecution of remedies by decree-holders.

During the same period no civil Court shall issue any process of execution either against the judgment-debtor or his property in respect of any decree for the satisfaction whereof provision has been made by the Collector under section 323.

The same period shall be excluded in calculating the period of limitation applicable to the execution of any decree affected by the provisions of this section in respect of any remedy of which the decree-holder has thereby been temporarily deprived.

325B. When the property of which the sale has been ordered is situate in more districts than one, the powers and duties conferred and imposed on the Collector by sections 321 to 325 (both inclusive) shall, Provision where property is in several districts.

from

from time to time, be exercised and performed by such one of the Collectors of the said districts as the Local Government may by general rule or special order direct.

Powers of Collector to compel attendance of parties and witnesses and production of documents.

325C. In exercising the powers conferred on him by sections 322 to 325 (both inclusive), the Collector shall have the powers of a civil Court to compel the attendance of parties and witnesses and the production of documents.

When Court may authorize Collector to stay public sale of land.

326. When, in any local area in which no declaration under section 320 is in force, the property attached consists of land or of a share in land, and the Collector represents to the Court that the public sale of the land or share is objectionable, and that satisfaction of the decree may be made within a reasonable period by a temporary alienation or management of the land or share, the Court may authorize the Collector to provide for such satisfaction in the manner recommended by him, instead of proceeding to a sale of the land or share. In such case the provisions of sections 320, paragraph two, to 325C (both inclusive) shall apply, as far as they are applicable.

Local rules as to sales of land in execution of decrees for money.

327. The Local Government may, from time to time, with the sanction of the Governor General in Council, make special rules for any local area imposing conditions in respect of sale of any class of interests in land in execution of decrees for money, where such interests are so uncertain or undetermined as, in the opinion of the Local Government, to make it impossible to fix their value:

and if, when this Code comes into operation in any local area, any special rules as to sale of land in execution of decrees are in force therein, the Local Government may continue such rules in force, or may, from time to time, with the sanction of the Governor General in Council, modify the same.

All rules so made or continued, and all such modifications of the same, shall be published in the local official Gazette, and shall thereupon have the force of law.

H.—Of

H.—Of Resistance to Execution.

328. If, in the execution of a decree for the possession of property, the officer charged with the execution of the warrant is resisted or obstructed by any person, the decree-holder may complain to the Court at any time within one month from the time of such resistance or obstruction.

Procedure in case of obstruction to execution of decree.

The Court shall fix a day for investigating the complaint, and shall summon the party against whom the complaint is made to answer the same.

329. If the Court is satisfied that the obstruction or resistance was occasioned by the judgment-debtor or by some person at his instigation, the Court shall inquire into the matter of the complaint, and pass such order as it thinks fit.

Procedure in case of obstruction by judgment-debtor or at his instigation.

330. If the Court is satisfied that the resistance or obstruction was without any just cause, and that the complainant is still resisted or obstructed in obtaining possession of the property by the judgment-debtor or some other person at his instigation, the Court may, at the instance of the decree-holder and without prejudice to any penalty to which such judgment-debtor or other person may be liable, under the Indian Penal Code or any other law, for such resistance or obstruction, commit the judgment-debtor or such other person to jail for a term which may extend to thirty days, and direct that the decree-holder be put into the possession of the property.

Procedure when obstruction continues.

331. If the resistance or obstruction has been occasioned by any person other than the judgment-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the judgment-debtor, the claim shall be numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant;

Procedure in case of obstruction by claimant in good faith, other than judgment-debtor.

and the Court shall, without prejudice to any proceedings to which the claimant may be liable under the Indian Penal Code or any other law for the punish-

ment

ment of such resistance or obstruction, proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of Chapter V,

and shall pass such order as it thinks fit for executing or staying execution of the decree.

Every such order shall have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise.

Procedure in case of person dispossessed of property disputing right of decree-holder to be put into possession.

332. If any person other than the judgment-debtor is dispossessed of any property in execution of a decree, and such person disputes the right of the decree-holder to dispossess him of such property under the decree, on the ground that the property was *bonâ fide* in his possession on his own account or on account of some person other than the judgment-debtor, and that it was not comprised in the decree, or that, if it was comprised in the decree, he was not a party to the suit in which the decree was passed, he may apply to the Court.

If, after examining the applicant it appears to the Court that there is probable cause for making the application, the Court shall proceed to investigate the matter in dispute; and if it finds that the ground mentioned in the first paragraph of this section exists, it shall make an order that the applicant recover possession of the property, and if it does not find as aforesaid, it shall dismiss the application.

In hearing applications under this section, the Court shall confine itself to the grounds of dispute above specified.

The party against whom an order is passed under this section may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

Transfer of property by judgment-

333. Nothing in section 331 or 332 applies to a person to whom the judgment-debtor has transferred the

the property after the institution of the suit in which the decree is made.

debtor after institution of suit.

334. If the purchaser of any immoveable property sold in execution of a decree be resisted or obstructed by the judgment-debtor or any one on his behalf in obtaining possession of the property, the provisions of this chapter relating to resistance or obstruction to a decree-holder in obtaining possession of the property adjudged to him shall be applicable.

Resisting or obstructing purchaser in obtaining possession of immoveable property.

335. If the purchaser of any such property is resisted or obstructed by any person other than the judgment-debtor claiming in good faith a right to the present possession thereof, or if, in delivering possession thereof, any such person is dispossessed, the Court, on the complaint of the purchaser or the person so dispossessed, shall inquire into the matter of the resistance, obstruction or dispossession, as the case may be, and pass such order thereon as it thinks fit.

Obstruction by claimant other than judgment-debtor.

The party against whom such order is passed may institute a suit to establish the right which he claims to the present possession of the property; but, subject to the result of such suit, if any, the order shall be final.

I.—Of Arrest and Imprisonment.

336. A judgment-debtor may be arrested in execution of a decree at any hour and on any day, and shall as soon as practicable be brought before the Court, and his imprisonment may be in the civil jail of the district in which the Court ordering the imprisonment is situate, or, when such jail does not afford suitable accommodation, in any other place which the Local Government may appoint for the confinement of persons ordered by the Courts of such district to be imprisoned:

Place of judgment-debtor's imprisonment.

Provided as follows:—

(*a*) for the purpose of making an arrest under this section, no dwelling-house shall be entered after sunset or before sunrise, and no outer door of a dwelling-house shall be broken open. But, when the officer authorized to make the arrest has duly gained access to

to any dwelling-house, he may unfasten and open the door of any room in which he has reason to believe the judgment-debtor is to be found: provided that, if the room be in the actual occupancy of a woman who is not the judgment-debtor, and who according to the customs of the country does not appear in public, the officer shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her every reasonable facility for withdrawing, he may enter such room for the purpose of making the arrest:

Proviso.

(*b*) when the decree in execution of which a judgment-debtor is arrested is a decree for money and the judgment-debtor pays the amount of the decree and the costs of the arrest to the officer arresting him, such officer shall at once release him.

The Local Government may, by notification published in the official Gazette, direct that, whenever a judgment-debtor is arrested in execution of a decree for money and brought before the Court under this section, the Court shall inform him that he may apply under chapter XX to be declared an insolvent, and that he will be discharged if he has not committed any act of bad faith regarding the subject of his application and if he places all his property in possession of a receiver appointed by the Court.

If after such publication the judgment-debtor express his intention so to apply, and if he furnish sufficient security that he will appear when called upon, and that he will within one month apply under section 344 to be declared an insolvent, the Court shall release him from arrest:

But if he fails so to apply, the Court may either direct the security to be realized or commit him to jail in execution of the decree.

In the case of a surety such security may be realized in manner provided by section 253.

Warrant for arrest to direct judgment-debtor

337. Every warrant for the arrest of the judgment-debtor shall direct the officer entrusted with its execution to bring him before the Court with all convenient

convenient speed, unless the amount which he has been ordered to pay, together with the interest thereon and the costs, if any, to which he is liable, be sooner paid. to be brought up.

338. The Local Government may, from time to time, prescribe scales, graduated according to rank, race and nationality, of monthly allowances payable for the subsistence of judgment-debtors. Scales of subsistence-allowances.

339. No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as, having regard to the scales so fixed, the Judge thinks sufficient for the subsistence of the judgment-debtor from his arrest until he can be brought before the Court. Judgment-debtor's subsistence-money.

When a judgment-debtor is committed to jail in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to according to the said scales, or, where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.

The monthly allowance fixed by the Court shall be supplied by the party on whose application the decree has been executed, by monthly payments in advance before the first day of each month.

The first payment shall be made to the proper officer of the Court for such portion of the current month as remains unexpired before the judgment-debtor is committed to jail, and the subsequent payments (if any) shall be made to the officer in charge of the jail.

340. Sums disbursed by the decree-holder for the subsistence of the judgment-debtor in jail shall be deemed to be costs in the suit: Subsistence-money to be costs in suit.

Provided that the judgment-debtor shall not be detained in jail or arrested on account of any sum so disbursed.

341. The judgment-debtor shall be discharged from jail, Release of judgment-debtor.

(*a*) on the amount mentioned in the warrant of committal

committal being paid to the officer in charge of the jail; or

(*b*) on the decree being otherwise fully satisfied; or

(*c*) at the request of the person on whose application he has been imprisoned; or

(*d*) on such person omitting to pay the allowance as hereinbefore directed; or

(*e*) if the judgment-debtor be declared an insolvent, as hereinafter provided; or

(*f*) when the term of his imprisonment, as limited by section 342, is fulfilled:

Provided that, in the second, third and fifth cases mentioned in this section, the judgment-debtor shall not be discharged without the order of the Court.

A judgment-debtor discharged under this section is not thereby discharged from his debt; but he cannot be re-arrested under the decree in execution of which he was imprisoned.

Imprisonment not to exceed six months. When not to exceed six weeks.

342. No person shall be imprisoned in execution of a decree for a longer period than six months;

or for a longer period than six weeks if the decree be for the payment of a sum of money not exceeding fifty rupees.

Endorsement on warrant.

343. The officer entrusted with the execution of the warrant shall endorse thereupon the day on, and the manner in, which it was executed, and, if the latest day specified in the warrant for the return thereof has been exceeded, the reason of the delay, or if it was not executed, the reason why it was not executed, and shall return the warrant with such endorsement to the Court.

If the endorsement is to the effect that such officer is unable to execute the warrant, the Court shall examine him on oath touching his alleged inability, and may, if it thinks fit, summon and examine witnesses as to such inability, and shall record the result.

CHAPTER XX.

CHAPTER XX.

Of Insolvent Judgment-debtors.

Power to apply for declaration of insolvency.

344. Any judgment-debtor arrested or imprisoned in execution of a decree for money, or against whose property an order of attachment has been made in execution of such a decree, may apply in writing to be declared an insolvent.

Any holder of a decree for money may apply in writing that the judgment-debtor may be declared an insolvent.

Every such application shall be made to the District Court within the local limits of whose jurisdiction the judgment-debtor resides or is in custody.

Contents of application.

345. The application, when made by the judgment debtor, shall set forth—

(*a*) the fact of his arrest or imprisonment, or that an order for the attachment of his property has been made, the Court by whose order he was arrested or imprisoned, or by which the order of attachment was made, and, where he has been arrested or imprisoned, the place in which he is in custody;

(*b*) the amount, kind and particulars of his property, and the value of any such property not consisting of money;

(*c*) the place or places in which such property is to be found;

(*d*) his willingness to put it at the disposal of the Court;

(*e*) the amount and particulars of all pecuniary claims against him; and

(*f*) the names and residences of his creditors, so far as they are known to or can be ascertained by him.

The application, when made by the holder of a decree for money, shall set forth the date of the decree, the Court by which it was passed, the amount remaining due thereunder, and the place where the judgment-debtor resides or is in custody.

346. The

Subscription and verification of application.

346. The application shall be signed and verified by the applicant in manner hereinbefore prescribed for signing and verifying plaints.

Service of copy of application and notice.

347. The Court shall fix a day for hearing the application, and shall cause a copy thereof, with a notice in writing of the time and place at which it will be heard, to be stuck up in court and served at the applicant's expense—

where the applicant is the judgment-debtor—on the holder of the decree in execution of which he was arrested or imprisoned or the order of attachment was made, or on the pleader of such decree-holder, and on the other creditors (if any) mentioned in the application:

where the applicant is the decree-holder—on the judgment-debtor or his pleader.

The Court may, if it thinks fit, publish at the applicant's expense the application in such official Gazettes and public newspapers as it thinks fit.

Where the applicant is the judgment-debtor, the Court may exempt him from any payments under this section if satisfied that he is unable to make them.

Power to serve other creditors.

348. The Court may also, if it thinks fit, cause a like copy and notice to be served on any other person alleging himself to be a creditor of the applicant and applying for leave to be heard on the application.

Powers of Court as to judgment-debtor under arrest.

349. Where the judgment-debtor is under arrest, the Court may, pending the hearing under section 350, order him to be immediately committed to jail, or leave him in the custody of the officer to whom the service of the warrant was entrusted, or release him on his furnishing sufficient security that he will appear when called upon.

Procedure at hearing.

350. On the day so fixed, or on any subsequent day to which the Court may adjourn the hearing, the Court shall examine the judgment-debtor, in the presence of the persons on whom such notice has been served or their pleaders, as to his then circumstances and

and as to his future means of payment, and shall hear the said decree-holder, the other creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors, in opposition to the judgment-debtor's discharge; and may, if it thinks fit, grant time to the said decree-holder and other creditors or persons to adduce evidence showing that the judgment-debtor is not entitled to be declared an insolvent.

Declaration of insolvency and appointment of receiver.

351. If the Court is satisfied—

(*a*) that the statements in the application are substantially true;

(*b*) that the judgment-debtor has not, with intent to defaud his creditors, concealed, transferred or removed any part of his property since the institution of the suit in which was passed the decree in execution of which he was arrested or imprisoned, or the order of attachment was made, or at any subsequent time;

(*c*) that he has not, knowing himself to be unable to pay his debts in full, recklessly contracted debts or given an unfair preference to any of his creditors by any payment or disposition of his property;

(*d*) that he has not committed any other act of bad faith regarding the matter of the application,

the Court may declare him to be an insolvent, and may also, if it thinks fit, make an order appointing a receiver of his property, or if it does not appoint such receiver, may discharge the insolvent.

If the Court is not so satisfied, it shall make an order rejecting the application.

Creditors to prove their debts.

352. The creditors mentioned in the application, and the other persons (if any) alleging themselves to be creditors of the insolvent, shall then produce evidence of the amount and particulars of their respective pecuniary claims against him; and the Court shall by order determine the persons who have proved themselves to be the insolvent's creditors and their respective debts; and shall frame a schedule of such

Schedule to be framed.

persons

persons and debts; and the declaration under section 351 shall be deemed to be a decree in favour of each of the said creditors for their said respective debts.

A copy of every such schedule shall be stuck up in the court-house.

Nothing in this section shall be deemed to entitle a partner in an insolvent-firm or, when he has died before the insolvency, his legal representative, to prove in competition with the creditors of the firm.

Applications by unscheduled creditors.

353. Any creditor of the insolvent who is not mentioned in such schedule may apply to the Court for permission to produce evidence of the amount and particulars of his pecuniary claims against the insolvent, and, in case the applicant proves himself to be a creditor of the insolvent, for an order directing his name to be inserted in the schedule as a creditor for the debt so proved.

Any creditor mentioned in the schedule may apply to the Court for an order altering the schedule so far as regards the amount, nature or particulars of his own debt, or to strike out the name of another creditor, or to alter the schedule so far as regards the amount, nature or particulars of the debt of another creditor.

In the case of any application under this section, the Court, after causing such notices as it thinks fit to be served, at the applicant's expense, on the insolvent and the other creditors, and hearing their objections, if any, may comply with or reject the application.

Effect of order appointing Receiver.

354. Every order under section 351 shall be published in the local official Gazette and shall operate to vest in the Receiver all the insolvent's property (except the particulars specified in the first proviso to section 266), whether set forth in his application or not.

Receiver to give security and collect assets.

355. The Receiver so appointed shall give such security as the Court may direct and shall possess himself of all such property, except as aforesaid;

and

and on his certifying that the insolvent has placed him in possession thereof, or has done everything in his power for that purpose, the Court may discharge the insolvent upon such conditions (if any) as the Court thinks fit.

Discharge of insolvent.

356. The Receiver shall proceed under the direction of the Court—

Duty of Receiver.

(*a*) to convert the property into money:

(*b*) to pay thereout debts, fines and penalties (if any) due by the insolvent to Government:

(*c*) to pay the said decree-holder's costs:

(*d*) to discharge according to their respective priorities, all debts secured by mortgage of the insolvent's property:

(*e*) to distribute the balance among the scheduled creditors rateably according to the amounts of their respective debts and without any preference,

and such Receiver may retain as a remuneration for the performance of his duties a commission, to be fixed by the Court, not exceeding the rate of five per centum upon the amount of the balance so distributed (the amount of the commission so retained being deemed a distribution) and shall deliver the surplus, if any, to the insolvent or his legal representative:

His right to remuneration.

Delivery of surplus.

Provided that, in any local area in which a declaration has been made under section 320 and is in force, no sale of immoveable property paying revenue to Government or held or let for agricultural purposes shall be made by the Receiver; but, after he has sold the other property of the insolvent, the Court shall ascertain (*a*) the amount required to satisfy the claims of the scheduled creditors after deducting the moneys already received, (*b*) the immoveable property of the insolvent remaining unsold, and (*c*) the incumbrances, if any, existing thereon, and shall forward a statement to the Collector containing the particulars aforesaid; and thereupon the Collector shall proceed to raise the amount so required by the exercise of such of the

powers

powers conferred on him by sections 322 to 325 both inclusive, as he thinks fit, and subject to the provisions of those sections so far as they may be applicable; and shall hold at the disposal of the Court all sums that may come to his hands by such exercise.

Effect of discharge.

357. An insolvent discharged under section 351 or 355 shall not be arrested or imprisoned on account of any of the scheduled debts. But (subject to the provisions of section 358) his property, whether previously or subsequently acquired (except the particulars specified in the first proviso to section 266 and except the property vested in the Receiver), shall, by order of the Court, be liable to attachment and sale until the debts due to the scheduled creditors are satisfied to the extent of one-third, or until the expiry of twelve years from the date of the order of discharge under section 351 or 355.

Declaration that insolvent is discharged from liability.

358. If the aggregate amount of the scheduled debts is two hundred rupees or a less sum, the Court may, and in any case after the scheduled debts have been satisfied to the extent of one-third, or after the expiry of twelve years from the order of discharge, the Court shall declare the insolvent discharged as aforesaid absolved from further liablity in respect of such debts.

Procedure in case of dishonest applicant.

359. Whenever, at the hearing under section 350, it is proved that the applicant has

(*a*) been guilty, in his application, of any concealment or of wilfully making any false statement as to the debts due by him, or respecting the property belonging to him, whether in possession or in expectancy, or held for him in trust;

(*b*) fraudulently concealed, transferred or removed any property; or

(*c*) committed any other act of bad faith regarding the matter of the application,

the Court shall, at the instance of any of his creditors, sentence him by order in writing to imprisonment for a term which may extend to one year from the date of committal.

Or

Or the Court may, if it think fit, send him to the Magistrate to be dealt with according to law.

Investment of other Courts with powers of District Courts. Transfer of cases.

360. The Local Government may, by notification in the official Gazette, invest any Court other than a District Court with the powers conferred on District Courts by sections 344 to 359 (both inclusive), and the District Judge may transfer to any Court situate in his district and so invested any case instituted under section 344.

Any Court so invested may entertain any application under section 344 by any person arrested in execution of a decree of such Court.

Nothing in this chapter shall apply to any Court having jurisdiction in the towns of Rangoon, Maulmain, Akyab and Bassein where the property of the judgment-debtor exceeds in value two thousand five hundred rupees, or the amount of the pecuniary claims against him exceeds five thousand rupees, or such property or any part thereof is situate outside British Burma.

PART II.

OF INCIDENTAL PROCEEDINGS.

CHAPTER XXI.

OF THE DEATH, MARRIAGE AND INSOLVENCY OF PARTIES.

No abatement by party's death if right to sue survives.

361. The death of a plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Illustrations.

(*a*) A covenants with B and C to pay an annuity to B during C's life. B and C sue A to compel payment. B dies before the decree: the right to sue survives to C, and the suit does not abate.

(*b*) In the same case, all the parties die before decree. The right to sue survives to the representative of the survivor of B and C, and he may continue the suit against A's representative.

(*c*) A

(*c*) A sues B for libel. A dies. The right to sue does not survive, and the suit abates.

(*d*) A, a member of a Hindú joint family under the Mitákshará law, institutes a suit for partition of the family-property. A dies leaving B, a minor son, his heir. The right to sue survives to B, and the suit does not abate.

Procedure in case of death of one of several plaintiffs or defendants, if right to sue survives.

362. If there be more plaintiffs or defendants than one, and any of them dies, and if the right to sue survives to the surviving plaintiff or plaintiffs alone, or against the surviving defendant or defendants alone, the Court shall cause an entry to that effect to be made on the record, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs, or against the surviving defendant or defendants.

Procedure in case of death of one of several plaintiffs where right to sue survives to survivors and representative of deceased

363. If there be more plaintiffs than one, and any of them dies, and if the right to sue does not survive to the surviving plaintiff or plaintiffs alone, but survives to him or them and the legal representative of the deceased plaintiff jointly, the Court may, on the application of such legal representative, enter his name on the record in the place of such deceased plaintiff, and the suit shall proceed at the instance of the surviving plaintiff or plaintiffs and such legal representative.

Procedure where no application made by representative of deceased plaintiff.

364 If within the time limited by law no application be made to the Court by any person claiming to be the legal representative of a deceased plaintiff, the suit shall proceed at the instance of the surviving plaintiff or plaintiffs;

and the legal representative (if any) of the deceased plaintiff shall be made a party and shall be interested in and bound by the decree passed in the suit, in the same manner as if the suit had proceeded at his instance conjointly with the surviving plaintiff or plaintiffs.

Procedure in case of death of sole, or sole surviving, plaintiff.

365. In case of the death of a sole plaintiff or sole surviving plaintiff, the Court may, where the right to sue survives, on the application of the legal representative of the deceased, enter his name in the place of such

such plaintiff on the record, and the suit shall thereupon proceed.

Abatement where no application by representative of deceased plaintiff.

366. If within the time limited by law no such application be made to the Court by any person claiming to be the legal representative of the deceased plaintiff, the Court may pass an order that the suit shall abate, and shall, on the application of the defendant, award to the defendant the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff;

or the Court may, if it think proper, on the application of the defendant, and upon such terms as to costs or otherwise as it thinks fit, pass such other order as it thinks fit for bringing in the legal representative of the deceased plaintiff, or for proceeding with the suit in order to a final determination of the matter in dispute, or for both those purposes.

Explanation.—A certificate of heirship, or a certificate to collect debts, does not of itself constitute the person holding it the legal representative of the deceased. But when the person holding any such certificate obtains thereby property belonging to the deceased, he may be treated as a legal representative liable in respect of such property.

Procedure in case of dispute as to representative of deceased plaintiff.

367. If any dispute arise as to who is the legal representative of a deceased plaintiff, the Court may either stay the suit until the fact has been determined in another suit, or decide at or before the hearing of the suit who shall be admitted to be such legal representative for the purpose of prosecuting the suit.

Procedure in case of death of one of several defendants,

368. If there be more defendants than one, and any of them die before decree and the right to sue does not survive against the surviving defendant or defendants alone,

or sole, or sole surviving, defendant.

and also in case of the death of a sole defendant, or sole surviving defendant where the right to sue survives,

the plaintiff may make an application to the Court, specifying the name, description and place of abode of any person whom he alleges to be the legal representative

sentative of the deceased defendant, and whom he desires to be made the defendant in his stead.

The Court shall thereupon enter the name of such representative on the record in the place of such defendant,

and shall issue a summons to such representative to appear on a day to be therein mentioned to defend the suit;

and the case shall thereupon proceed in the same manner as if such representative had originally been made a defendant and had been a party to the former proceedings in the suit:

Provided that the person so made defendant may object that he is not the legal representative of the deceased defendant, or may make any defence appropriate to his character as such representative.

When the plaintiff fails to make such application within the period prescribed therefor, the suit shall abate, unless he satisfies the Court that he had sufficient cause for not making the application within such period.

Suit not abated by marriage of female party.

369. The marriage of a female plaintiff or defendant shall not cause the suit to abate, but the suit may notwithstanding be proceeded with to judgment, and, where the decree is against a female defendant, it may thereupon be executed against her alone.

If the case is one in which the husband is by law liable for the debts of his wife, the decree may, with the permission of the Court, be executed against the husband also; and, in case of judgment for the wife, execution of the decree may with such permission be issued upon the application of the husband, where the husband is by law entitled to the subject-matter of the decree.

When plaintiff's bankruptcy or insolvency bars suit.

370. The bankruptcy or insolvency of a plaintiff in any suit which his assignee or the receiver appointed under section 351 might maintain for the benefit of his creditors shall not bar the suit, unless such assignee or receiver declines to continue the suit

and

and to give security for the costs thereof within such time as the Court may order.

If the assignee or receiver neglect or refuse to continue the suit and to give such security within the time so ordered, the defendant may apply for the dismissal of the suit on the ground of the plaintiff's bankruptcy or insolvency, and the Court may dismiss the suit and award to the defendant the costs which he has incurred in defending the same, to be proved as a debt against the plaintiff's estate.

Procedure when assignee fails to continue suit or give security.

371. When a suit abates or is dismissed under this chapter, no fresh suit shall be brought on the same cause of action.

Effect of abatement or dismissal.

But the person claiming to be the legal representative of the deceased or bankrupt or insolvent plaintiff may apply for an order to set aside the order for abatement or dismissal; and, if it be proved that he was prevented by any sufficient cause from continuing the suit, the Court shall set aside the abatement or dismissal upon such terms as to costs or otherwise as it thinks fit.

Application to set aside abatement or dismissal.

372. In other cases of assignment, creation or devolution of any interest pending the suit, the suit may, with the leave of the Court, given either with the consent of all parties or after service of notice in writing upon them, and hearing their objections, if any, be continued by or against the person to whom such interest has come either in addition to or in substitution for the person from whom it has passed, as the case may require.

Procedure in case of assignment pending suit.

CHAPTER XXII.

Of the Withdrawal and Adjustment of Suits.

373. If, at any time after the institution of the suit, the Court is satisfied on the application of the plaintiff (*a*) that the suit must fail by reason of some formal defect, or (*b*) that there are sufficient grounds for permitting him to withdraw from the suit or to abandon part of his claim with liberty to bring a fresh

Power to allow plaintiff to withdraw with liberty to bring fresh suit.

fresh suit for the subject-matter of the suit or in respect of the part so abandoned, the Court may grant such permission on such terms as to costs or otherwise as it thinks fit.

If the plaintiff withdraw from the suit, or abandon part of his claim, without such permission, he shall be liable for such costs as the Court may award, and shall be precluded from bringing a fresh suit for the same matter or in respect of the same part.

Nothing in this section shall be deemed to authorize the Court to permit one of several plaintiffs to withdraw without the consent of the others.

Limitation law not affected by first suit.

374. In any fresh suit instituted on permission granted under the last preceding section, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought.

Compromise of suits.

375. If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction.

CHAPTER XXIII.

Of Payment into Court.

Deposit by defendant of amount in satisfaction of claim.

376. The defendant in any suit to recover a debt or damages may, at any stage of the suit, deposit in court such sum of money as he considers a satisfaction in full of the claim.

Notice of deposit.

377. Notice in writing of the deposit shall be given through the Court by the defendant to the plaintiff, and the amount of the deposit shall (unless the Court otherwise directs) be paid to the plaintiff on his application.

Interest on

378. No interest shall be allowed to the plaintiff on

on any sum deposited by the defendant from the date of the receipt of such notice, whether the sum deposited be in full of the claim or fall short thereof.

deposit not allowed to plaintiff after notice.

379. If the plaintiff accept such amount only as satisfaction in part of his claim, he may prosecute his suit for the balance; and if the Court decides that the deposit by the defendant was a full satisfaction of the plaintiff's claim, the plaintiff must pay the costs of the suit incurred after the deposit and the costs incurred previous thereto, so far as they were caused by excess in the plaintiff's claim.

Procedure where plaintiff accepts deposit as satisfaction in part.

If the plaintiff accept such amount as satisfaction in full of his claim, he shall present to the Court a statement to that effect, and such statement shall be filed and the Court shall pass judgment accordingly, and, in directing by whom the costs of each party are to be paid, the Court shall consider which of the parties is most to blame for the litigation.

Procedure where he accepts it as satisfaction in full.

Illustrations.

(*a*). A owes B Rs. 100. B sues A for the amount, having made no demand for payment and having no reason to believe that the delay caused by making a demand would place him at a disadvantage. On the plaint being filed, A pays the money into court. B accepts it in full satisfaction of his claim, but the Court should not allow him any costs, the litigation being presumably groundless on his part.

(*b*) B sues A under the circumstances mentioned in Illustration (*a*). On the plaint being filed, A disputes the claim. Afterwards A pays the money into court. B accepts it in full satisfaction of his claim. The Court should also give B his costs of suit, A's conduct having shown that the litigation was necessary.

(*c*). A owes B Rs. 100 and is willing to pay him that sum without suit. B claims Rs. 150 and sues A for that amount. On the plaint being filed, A pays Rs. 100 into court and disputes only his liability to pay the remaining Rs. 50. B accepts the Rs. 100 in full satisfaction of his claim. The Court should order him to pay A's costs.

CHAPTER XXIV.

Of Requiring Security for Costs.

380. If, at the institution or at any subsequent stage

When securi-

ty for costs may be required from plaintiff at any stage of suit.

stage of a suit, it appears to the Court that a sole plaintiff is, or (when there are more plaintiffs than one) that all the plaintiffs are residing out of British India, and that such plaintiff does not, or that no one of such plaintiffs does, possess any sufficient immoveable property within British India independent of the property in suit, the Court may, either of its own motion or on the application of any defendant, order the plaintiff or plaintiffs, within a time to be fixed by the order, to give security for the payment of all costs incurred and likely to be incurred by any defendant.

Effect of failure to furnish security.

381. In the event of such security not being furnished within the time so fixed, the Court shall dismiss the suit unless the plaintiff or plaintiffs be permitted to withdraw therefrom under the provisions of section 373.

Residence out of British India.

382. Whoever leaves British India under such circumstances as to afford reasonable probability that he will not be forthcoming whenever he may be called upon to pay costs shall be deemed to be residing out of British India within the meaning of section 380.

CHAPTER XXV.

OF COMMISSIONS.

A.—Commissions to Examine Witnesses.

Cases in which Court may issue commission to examine witness.

383. Any Court may in any suit issue a commission for the examination on interrogatories or otherwise of persons resident within the local limits of its jurisdiction, who are exempted under this Code from attending the Court, or who are from sickness or infirmity unable to attend it.

Order for commission.

384. Such order may be made by the Court either of its own motion, or on the application, supported by affidavit or otherwise, of any party to the suit or of the witness to be examined.

When witness resides within Court's jurisdiction.

385. The commission for the examination of a person who resides within the local limits of the jurisdiction of the Court issuing the same may be issued to any

any person whom the Court thinks fit to execute the same.

386. Any Court may in any suit issue a commission for the examination of— Persons for whose examination commission may issue.

(*a*) any person resident beyond the local limits of its jurisdiction;

(*b*) persons who are about to leave such limits before the date on which they are required to be examined in Court; and

(*c*) civil and military officers of Government who cannot, in the opinion of the Judge, attend the Court without detriment to the public service.

Such commission may be issued to any Court, not being a High Court or the Court of the Recorder of Rangoon, within the local limits of whose jurisdiction such person resides, or to any pleader of a High Court whom the Court issuing the commission thinks fit to appoint.

The Court on issuing any commission under this section shall direct whether the commission shall be returned to itself or to any subordinate Court.

387. When any Court to which application is made for the issue of a commission for the examination of a person residing at any place not within British India is satisfied that his evidence is necessary, the Court may issue such commission. Commission to examine witness not within British India.

388. Every Court receiving a commission for the examination of any person shall examine him pursuant thereto. Court to examine witness pursuant to commission.

389. After the commission has been duly executed, it shall be returned, together with the evidence taken under it, to the Court out of which it issued, unless the order for issuing the commission has otherwise directed, in which case the commission shall be returned in terms of such order; and the commission and the return thereto, and the evidence taken under it, shall (subject to the provisions of the next following section) form part of the record of the suit. Return of commission with depositions of witnesses.

390. Evidence taken under a commission shall not be When deposi-

tions may be read in evidence.

be read as evidence in the suit without the consent of the party against whom the same is offered, unless

(*a*) the person who gave the evidence is beyond the jurisdiction of the Court, or dead, or unable from sickness or infirmity to attend to be personally examined, or exempted from personal appearance in Court, or

(*b*) the Court in its discretion dispenses with the proof of any of the circumstances mentioned in the last preceding clause, and authorizes the evidence of any person being read as evidence in the suit, notwithstanding proof that the cause for taking such evidence by commission has ceased at the time of reading the same.

Provisions as to execution and return of commissions to apply to commissions issued by foreign Courts.

391. The provisions hereinbefore contained as to the execution and return of commissions shall apply to commissions issued by

(*a*) Courts situate beyond the limits of British India and established by the authority of Her Majesty or of the Governor General in Council, or

(*b*) Courts situate in any part of the British Empire other than British India, or

(*c*) Courts of any foreign country for the time being in alliance with Her Majesty.

B.—Commissions for local Investigations.

Commission to make local investigations.

392. In any suit or proceeding in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits, or damages or annual nett profits, and the same cannot be conveniently conducted by the Judge in person, the Court may issue a commission to such person as it thinks fit, directing him to make such investigation and to report thereon to the Court:

Provided that, when the Local Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.

393. The

393. The Commissioner, after such local inspection as he deems necessary, and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing, signed with his name, to the Court.

Procedure of Commissioner.

The report of the Commissioner and the evidence taken by him, (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court, or, with the permission of the Court, any of the parties to the suit, may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to the manner in which he has made the investigation.

Report and depositions to be evidence in suit.

Commissioner may be examined in person.

C.—Commissions to examine Accounts.

394. In any suit in which an examination or adjustment of accounts is necessary, the Court may issue a commission to such person as it thinks fit directing him to make such examination or adjustment.

Commission to examine or adjust accounts.

395. The Court shall furnish the Commissioner with such part of the proceedings and such detailed instructions as appear necessary,

Court to give Commissioner necessary instructions.

and the instructions shall distinctly specify whether the Commissioner is merely to transmit the proceedings which he may hold on the enquiry, or also to report his own opinion on the point referred for his examination.

The proceedings of the Commissioner shall be received in evidence in the suit, unless the Court has reason to be dissatisfied with them, in which case the Court shall direct such further inquiry as is requisite.

Court to receive Commissioner's proceedings or direct further inquiry.

D.—Commission to make Partition.

396. In any suit in which the partition of immoveable property not paying revenue to Government appears to the Court to be necessary, the Court, after ascertaining the several parties interested in such property and their several rights therein, may issue a commission

Commission to make partition of non-revenue-paying immoveable property.

commission to such persons as it thinks fit to make a partition according to such rights.

Procedure of Commissioners.

The Commissioners shall ascertain and inspect the property, and shall divide the same into as many shares as may be directed by the order under which the commission issues, and shall allot such shares to the parties, and may, if authorized thereto by the said order, award sums to be paid for the purpose of equalizing the value of the shares.

The Commissioners shall then prepare and sign a report, or (if they cannot agree) separate reports, appointing the share of each party, and distinguishing each share (if so directed by the said order) by metes and bounds. Such report or reports shall be annexed to the commission and transmitted to the Court; and the Court, after hearing any objections which the parties may make to the report or reports, shall either quash the same and issue a new commission, or (where the Commissioners agree in their report) pass a decree in accordance therewith.

E—General Provisions.

Expenses of commission to be paid into court.

397. Before issuing any commission under this chapter, the Court may order such sum (if any) as it thinks reasonable for the expenses of the commission to be, within a time to be fixed by the Court, paid into court by the party at whose instance or for whose benefit the commission is issued.

Powers of Commissioners.

398. Any Commissioner appointed under this chapter may, unless otherwise directed by the order of appointment,

(*a*) examine the parties themselves and any witness whom they or any of them may produce, and any other person whom the Commissioner thinks proper to call upon to give evidence in the matter referred to him;

(*b*) call for and examine documents and other things relevant to the subject of inquiry;

(*c*) at any reasonable time enter upon or into any land or building mentioned in the order.

399. The

399. The provisions of this Code relating to the summoning, attendance and examination of witnesses, and to the remuneration of, and penalties to be imposed upon, witnesses, shall apply to persons required to give evidence or to produce documents under this chapter, whether the commission in execution of which they are so required has been issued by a Court situate within, or by a Court situate beyond, the limits of British India.

Attendance, examination and punishment of witnesses before Commissioner.

For the purposes of this section, the Commissioner shall be deemed to be a Court of Civil Judicature.

400. Whenever a commission is issued under this chapter, the Court shall direct that the parties to the suit shall appear before the Commissioner in person or by their agents or pleaders.

Court to direct parties to appear before Commissioner.

If the parties do not so appear the Commissioner may proceed *ex parte.*

Procedure *ex parte.*

PART III.

OF SUITS IN PARTICULAR CASES.

CHAPTER XXVI.

SUITS BY PAUPERS.

401. Subject to the following rules, any suit may be brought by a pauper.

Suits may be brought *in forma pauperis.*

Explanation.—A person is a "pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing apparel and the subject-matter of the suit.

402. No suit shall be brought by a pauper to recover compensation for loss of caste, libel, slander, abusive language or assault.

What suits excepted.

403. The application for permission to sue by a pauper shall be in writing, and shall contain the particulars

Application to be in writing.

Contents of application.

culars required by section 50 in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the petitioner, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner hereinbefore prescribed for the signing and verification of plaints.

Presentation of application.

404. Notwithstanding anything contained in section 36, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court under section 640 or section 641, in which case the application may be presented by a duly authorized agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

Rejection of application.

405. If the application be not framed or presented in the manner prescribed by sections 403 and 404, the Court shall reject it.

Examination of applicant.

406. If the application be in proper form and duly presented, the Judge may, if he thinks fit, examine the petitioner, or his agent, when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

If presented by agent, Court may order applicant to be examined by commission.

When the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a commission in the manner in which the examination of an absent witness may be taken under the provisions of this Code.

Rejection of application.

407. If it appear to the Court

(*a*) that the applicant is not a pauper, or

(*b*) that he has, within the two months next before the presentation of the application, disposed of any property fraudulently or with a view to obtain the benefit of this chapter, or

(*c*) that his allegations do not show a right to sue in such Court, or

(*d*) that he has entered into any agreement with reference to the subject-matter of the proposed suit under

under which any other person has obtained an interest in such subject-matter,

the Court shall reject the application.

408. If the Court sees no reason to refuse the application on any of the grounds stated in section 407, it shall fix a day (of which at least ten days' previous notice shall be given to the opposite party and the Government Pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

Notice of day for receiving evidence of applicant's pauperism.

409. On the day so fixed, or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may cross-examine the applicant or his agent, and shall make a memorandum of the substance of their evidence.

Procedure at hearing.

The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in section 407.

The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

410. If the application be granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the suit shall proceed in all other respects as a suit instituted under Chapter V, except that the plaintiff shall not be liable to any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader, or other proceeding connected with the suit.

Procedure if application admitted.

411. If the plaintiff succeed in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; and such amount shall be a first charge on the subject-matter of the suit, and shall also be recoverable by the Government from any party ordered by the decree to pay the same, in the

Costs when pauper succeeds.

Recovery of court-fees.

same

same manner as costs of suit are recoverable under this Code.

Procedure when pauper fails.

412. If the plaintiff fails in the suit, or if he is dispaupered, or if the suit is dismissed under section 97 or 98, the Court shall order the plaintiff, or any person made, under section 32, co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper;

and if it find that the suit was frivolous or vexatious, it may also punish the plaintiff with fine not exceeding one hundred rupees, or with imprisonment for a term which may extend to a month, or with both.

Refusal to allow applicant to sue as pauper to bar subsequent application of like nature.

413. An order of refusal made under section 409 to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue; but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by Government in opposing his application for leave to sue as a pauper.

Dispaupering.

414. The Court may, on motion by the defendant, or by the Government Pleader, of which one week's notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered—

(*a*) if he is guilty of vexatious or improper conduct in the course of the suit;

(*b*) if it appears that his means are such that he ought not to continue to sue as a pauper; or

(*c*) if he has entered into any agreement with reference to the subject-matter of the suit, under which any other person has obtained an interest in such subject-matter.

Costs.

415. The costs of an application for permission to sue as a pauper and of an inquiry into pauperism are costs in the suit.

CHAPTER XXVII.

CHAPTER XXVII.

SUITS BY OR AGAINST GOVERNMENT OR PUBLIC OFFICERS.

416. Suits by or against the Government shall be instituted by or against (as the case may be) the Secretary of State for India in Council.

Suits by or against Secretary of State in Council.

417. Persons being *ex officio* or otherwise authorized to act for Government in respect of any judicial proceeding shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of Government.

Persons authorized to act for Government.

418. In suits by the Secretary of State for India in Council, instead of inserting in the plaint the name and description and place of abode of the plaintiff, it shall be sufficient to insert the words "The Secretary of State for India in Council."

Plaints in suits by Secretary of State in Council.

419. The Government Pleader in any court shall be the agent of the Government for the purpose of receiving processes against the said Secretary of State in Council issuing out of such court.

Agent for Government to receive process.

420. The Court, in fixing the day for the said Secretary of State in Council to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channels, and for the issue of instructions to the Government Pleader to appear and answer on behalf of the said Secretary of State in Council or the Government, and may extend the time at its discretion.

Appearance and answer by Secretary of State in Council.

421. The Court may also, in any case in which the Government Pleader is not accompanied by any person on the part of the said Secretary of State in Council, who may be able to answer any material questions relating to the suit, direct the attendance of such a person.

Attendance of person able to answer questions relating to suit against Government.

422. Where the defendant is a public officer, the Court may send a copy of the summons to the head of the office in which the defendant is employed, for the purpose of being served on him, if it appear to the Court

Service on public officers.

Court that the summons may be most conveniently so served.

Extension of time to enable officer to make reference to Government.

423. If the public officer on receiving the summons considers it proper to make a reference to the Government before answering to the plaint, he may apply to the Court to grant such extension of the time fixed in the summons as may be necessary to enable him to make such reference and to receive orders thereon through the proper channel;

and the Court upon such application may extend the time for so long as appears to be requisite.

Notice previous to suing Secretary of State in Council or public officer.

424. No suit shall be instituted against the said Secretary of State in Council, or against a public officer in respect of an act purporting to be done by him in his official capacity, until the expiration of two months next after notice in writing has been, in the case of the Secretary of State in Council, delivered to, or left at the office of, a Secretary to the Local Government or the Collector of the District, and, in the case of a public officer, delivered to him or left at his office, stating the cause of action and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left.

Arrests in such suits.

425. No warrant of arrest shall be issued in such suit without the consent in writing of the District Judge.

Application where Government undertakes defence.

426. If the Government undertakes the defence of a suit against a public officer, the Government Pleader, upon being furnished with authority to appear and answer to the plaint, shall apply to the Court, and upon such application the Court shall cause a note of his authority to be entered in the register.

Procedure where no such application made. Defendant not liable to

427. If such application is not made by the Government Pleader on or before the day fixed in the notice for the defendant to appear and answer to the plaint, the case shall proceed as in a suit between private parties, except that the defendant shall not be

be liable to arrest, nor his property to attachment, otherwise than in execution of a decree.

arrest before judgment.

428. In a suit against a public officer in respect of such act as aforesaid, the Court shall exempt the defendant from appearing in person when he satisfies the Court that he cannot absent himself from his duty without detriment to the public service.

Exemption of public officers from personal appearance.

429. When the decree is against the said Secretary of State in Council or against a public officer in respect of such act as aforesaid, a time shall be specified in the decree within which it shall be satisfied; and, if the decree is not satisfied within the time so specified, the Court shall report the case for the orders of the Local Government.

Procedure where decree against Government or public officer.

Execution shall not issue on any such decree unless it remains unsatisfied for the period of three months computed from the date of the report.

CHAPTER XXVIII.

SUITS BY ALIENS AND BY OR AGAINST FOREIGN AND NATIVE RULERS.

430. Alien enemies residing in British India with the permission of the Governor General in Council, and alien friends, may sue in the Courts of British India as if they were subjects of Her Majesty.

When aliens may sue.

No alien enemy residing in British India without such permission, or residing in a foreign country, shall sue in any of such Courts.

Explanation.—Every person residing in a foreign country, the Government of which is at war with the United Kingdom of Great Britain and Ireland, and carrying on business in that country without a license in that behalf under the hand of one of Her Majesty's Secretaries of State or of a Secretary to the Government of India, shall, for the purpose of the second paragraph of this section, be deemed to be an alien enemy residing in a foreign country.

431. A

When foreign State may sue.

431. A foreign State may sue in the Courts of British India, provided that—

(*a*) it has been recognized by Her Majesty or the Governor General in Council, and

(*b*) the object of the suit is to enforce the private rights of the head or of the subjects of the foreign State.

The Court shall take judicial notice of the fact that a foreign State has not been recognized by Her Majesty or by the Governor General in Council.

Persons specially appointed by Government to prosecute or defend for Princes or Chiefs.

432. Persons specially appointed by order of Government at the request of any Sovereign Prince or ruling Chief, whether in subordinate alliance with the British Government or otherwise, and whether residing within or without British India, to prosecute or defend any suit on his behalf, shall be deemed to be the recognized agents by whom appearances, acts and applications under this Code may be made or done on behalf of such Prince or Chief.

Suits against Sovereign Princes, &c.

433. Any such Prince or Chief, and any ambassador or envoy of a foreign State, may, with the consent of Government certified by the signature of one of its Secretaries (but not without such consent), be sued in any competent Court not subordinate to a District Court.

Such consent shall not be given unless—

(*a*) the Prince, Chief, ambassador or envoy has instituted a suit in such Court against the person desiring to sue him; or

(*b*) the Prince, Chief, ambassador or envoy, by himself or another, trades within the local limits of the jurisdiction of such Court; or

(*c*) the subject-matter of the suit is immoveable property situate within the said local limits and in the possession of the Prince, Chief, ambassador or envoy.

Sovereign Princes, &c., exempt from arrest.

No such Prince, Chief, ambassador or envoy shall be arrested under this Code; and no decree shall be executed against the property of any such Prince, Chief,

Chief, ambassador or envoy unless with consent of Government certified as aforesaid.

When their property may be attached.

434. The Govenor General in Council may from time to time, by notification in the *Gazette of India*,

Execution in British India of decrees of Courts of Native States.

(*a*) declare that the decrees of any Civil or Revenue Courts situate in the territories of any Native Prince or State in alliance with Her Majesty, and not established by the authority of the Governor General in Council, may be executed in British India as if they had been made by the Courts of British India, and

(*b*) cancel any such declaration.

So long as such declaration remains in force, the said decrees may be executed accordingly.

CHAPTER XXIX.

SUITS BY AND AGAINST CORPORATIONS AND COMPANIES.

Subscription and verification of plaint.

435. In suits by a Corporation, or by a Company authorized to sue and be sued in the name of an officer or of a trustee, the plaint may be subscribed and verified on behalf of the Corporation or Company by any director, secretary or other principal officer of the Corporation or Company, who is able to depose to the facts of the case.

Service on Corporation or Company.

436. When the suit is against a Corporation, or against a Company authorized to sue and be sued in the name of an officer or of a trustee, the summons may be served—

(*a*) by leaving it at the registered office (if any) of the Corporation or Company, or

(*b*) by sending it by post in a letter addressed to such officer or trustee at the office (or if there be more offices than one, at the principal office in British India) of the Corporation or Company, or

(*c*) by giving it to any director, secretary or other principal officer of the Corporation or Company;

and

and the Court may require the personal appearance of any director, secretary or other principal officer of the Corporation or Company who may be able to answer material questions relating to the suit.

CHAPTER XXX.

SUITS BY AND AGAINST TRUSTEES, EXECUTORS AND ADMINISTRATORS.

Representation of beneficiaries in suits concerning property vested in trustees, &c.

437. In all suits concerning property vested in a trustee, executor or administrator, when the contention is between the persons beneficially interested in such property and a third person, the trustee, executor or administrator shall represent the persons so interested, and it shall not ordinarily be necessary to make them parties to the suit. But the Court may, if it thinks fit, order them or any of them to be made such parties.

Joinder of executors and administrators.

438. When there are several executors or administrators, they shall all be made parties to a suit against one or more of them:

Provided that executors who have not proved their testator's will, and executors and administrators beyond the local limits of the jurisdiction of the Court, need not be made parties.

Husband of married executrix not to join.

439. Unless the Court directs otherwise, the husband of a married administratrix or executrix shall not be a party to a suit by or against her.

CHAPTER XXXI.

SUITS BY AND AGAINST MINORS AND PERSONS OF UNSOUND MIND.

Minor must sue by next friend.

Costs.

440. Every suit by a minor shall be instituted in his name by an adult person, who in such suit shall be called the next friend of the minor, and may be ordered to pay any costs in the suit as if he were the plaintiff.

Applications to be made by next

441. Every application to the Court on behalf of a minor (other than an application under section 449)

449) shall be made by his next friend, or his guardian for the suit.

Friend or guardian *ad litem.*

442. If a plaint be filed by or on behalf of a minor without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. Notice of such application shall be given to such person by the defendant; and the Court, after hearing his objections, if any, may make such order in the matter as it thinks fit.

Plaint filed without next friend to be taken off file.

Costs.

443. Where the defendant to a suit is a minor, the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor, to put in the defence for such minor, and generally to act on his behalf in the conduct of the case.

Guardian *ad litem* to be appointed by Court.

A guardian for the suit is not a guardian of person or property within the meaning of the Indian Majority Act, 1875, section 3.

444. Every order made in a suit or on any application before the Court, in or by which a minor is in any way concerned or affected, without such minor being represented by a next friend or guardian for the suit, as the case may be, may be discharged, and, if the pleader of the party at whose instance such order was obtained knew, or might reasonably have known, the fact of such minority, with costs to be paid by such pleader.

Order obtained without next friend or guardian may be discharged.

Costs.

445. Any person being of sound mind and full age may act as next friend of a minor, provided his interest is not adverse to that of such minor, and he is not a defendant in the suit.

Who may be next friend.

446. If the interest of the next friend of a minor is adverse to that of such minor, or if he is so connected with a defendant whose interest is adverse to that of the minor, as to make it unlikely that the minor's interest will be properly protected by him, or if he does not do his duty, or, pending the suit, ceases to reside within British India, or for any other sufficient cause, application may be made on behalf of

Removal of next friend.

of the minor or by a defendant for his removal; and the Court (if satisfied of the sufficiency of the cause assigned) may order the next friend to be removed accordingly.

Retirement of next friend.

447. Unless otherwise ordered by the Court, a next friend shall not retire at his own request without first procuring a fit person to be put in his place, and giving security for the costs already incurred.

Application for appointment of new next friend.

The application for the appointment of a new next friend shall be supported by affidavit showing the fitness of the person proposed, and also that he has no interest adverse to the minor.

Stay of proceedings on death or removal of next friend.

448. On the death or removal of the next friend of a minor, further proceedings shall be stayed until the appointment of a next friend in his place.

Application for appointment of new next friend.

449. If the pleader of such minor omits, within reasonable time, to take steps to get a new next friend appointed, any person interested in the minor or the matter at issue may apply to the Court for the appointment of one, and the Court may appoint such person as it thinks fit.

Course to be followed by minor plaintiff or applicant on coming of age.

450. A minor plaintiff, or a minor not a party to a suit on whose behalf an application is pending, on coming of age must elect whether he will proceed with the suit or application.

Where he elects to proceed.

451. If he elects to proceed with it, he shall apply for an order discharging the next friend, and for leave to proceed in his own name.

The title of the suit or application shall in such case be corrected so as to read thenceforth thus:

"*A. B.*, late a minor, by *C. D.*, his next friend, but now of full age."

Where he elects to abandon.

Costs.

452. If he elects to abandon the suit or application, he shall, if a sole plaintiff, or sole applicant, apply for an order to dismiss the suit or application on repayment of the costs incurred by the defendant or respondent, or which may have been paid by his next friend.

453. Any

453. Any application under section 451 or section 452 may be made *ex parte*; and it must be proved by affidavit that the late minor has attained his full age.

Making and proving applications under sections 451, 452.

454. A minor co-plaintiff on coming of age and desiring to repudiate the suit must apply to have his name struck out as co-plaintiff; and the Court, if it finds that he is not a necessary party, shall dismiss him from the suit on such terms as to costs or otherwise as it thinks fit.

When minor co-plaintiff coming of age desires to repudiate suit.

Notice of the application shall be served on the next friend, as well as on the defendant; and it must be proved by affidavit that the late minor has attained his full age. The costs of all parties of such application, and of all or any proceedings theretofore had in the suit, shall be paid by such persons as the Court directs.

Costs.

If the late minor be a necessary party to the suit the Court may direct him to be made a defendant.

455. If any minor on attaining majority can prove to the satisfaction of the Court that a suit instituted in his name by a next friend was unreasonable or improper, he may, if a sole plaintiff, apply to have the suit dismissed.

When suit unreasonable or improper.

Notice of the application shall be served on all the parties concerned: and the Court, upon being satisfied of such unreasonableness or impropriety, may grant the application, and order the next friend to pay the costs of all parties in respect of the application and of anything done in the suit.

Costs.

456. An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff. Such application must be supported by an affidavit verifying the fact that the proposed guardian has no interest in the matters in question in the suit adverse to that of the minor, and that he is a fit person to be so appointed.

Petition for appointment of guardian *ad litem.*

Where there is no other person fit and willing to act as guardian for the suit, the Court may appoint any

any of its officers to be such guardian: provided that he has no interest adverse to that of the minor.

Who may be guardian *ad litem.*

457. A co-defendant of sound mind and of full age may be appointed guardian for the suit, if he has no interest adverse to that of the minor; but neither a plaintiff, nor a married woman, can be so appointed.

Guardian neglecting his duty may be removed.

Costs.

458. If the guardian for the suit of a minor defendant does not do his duty, or if other sufficient ground be made to appear, the Court may remove him, and may order him to pay such costs as may have been occasioned to any party by his breach of duty.

Appointment in place of guardian dying *pendente lite.*

459. If the guardian for the suit dies pending such suit, or is removed by the Court, the Court shall appoint a new guardian in his place.

Guardian *ad litem* of minor representative of deceased judgment-debtor.

460. When the enforcement of a decree is applied for against the heir or representative, being a minor, of a deceased party, a guardian for the suit of such minor shall be appointed by the Court, and the decree-holder shall serve on such guardian notice of such application.

Before decree, next friend or guardian *ad litem* not to receive money without leave of Court and giving security.

461. No sum of money or other thing shall be received or taken by a next friend or guardian for the suit on behalf of a minor, at any time before decree or order, unless he has first obtained the leave of the Court, and given security to its satisfaction that such money or other thing shall be duly accounted for to, and held for the benefit of, such minor.

Next friend or guardian *ad litem* not to compromise without leave of Court.

462. No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Compromise without leave voidable.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.

Application of sections 440 to 462 to persons of unsound mind.

463. The provisions contained in sections 440 to 462 (both inclusive) shall, *mutatis mutandis*, apply in the case of persons of unsound mind, adjudged to be so

so under Act No. XXXV of 1858, or under any other law for the time being in force.

464. Nothing in sections 442 to 462 applies to any minor or person of unsound mind, for whose person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law.

Wards of Court.

SECRETARIAT LIBRARY.

CHAPTER XXXII.

SUITS BY AND AGAINST MILITARY MEN.

465. When any officer or soldier actually serving the Government in a military capacity is a party to a suit, and cannot obtain leave of absence for the purpose of prosecuting or defending the suit in person, he may authorize any person to sue or defend in his stead.

Officers or soldiers who cannot obtain leave may authorize any person to sue or defend for them.

The authority shall be in writing and shall be signed by the officer or soldier in the presence of (*a*) his commanding officer, or the next subordinate officer, if the party be himself the commanding officer, or (*b*) where the officer or soldier is serving in military staff employment, the head or other superior officer of the office in which he is employed. Such commanding or other officer shall countersign the authority, which shall be filed in court.

When so filed, the countersignature shall be sufficient proof that the authority was duly executed, and that the officer or soldier by whom it was granted could not obtain leave of absence for the purpose of prosecuting or defending the suit in person.

Explanation.—In this chapter the expression "commanding officer" means the officer in actual command for the time being of any regiment, corps, detachment or depôt to which the officer or soldier belongs.

466. Any person authorized by an officer or a soldier to prosecute or defend a suit in his stead may prosecute or defend it in person in the same manner as the officer or soldier could do if present; or he may appoint

Person so authorized may act personally or appoint pleader.

appoint a pleader to prosecute or defend the suit on behalf of such officer or soldier.

Service on person so authorized, or on his pleader, to be good service.

467. Processes served upon any person authorized by an officer or a soldier, as in section 465, or upon any pleader appointed as aforesaid by such person to act for, or on behalf of, such officer or soldier, shall be as effectual as if they had been served on the party in person or on his pleader.

Service on officers and soldiers.

468. When ~~an officer or~~ a soldier is a defendant, the Court shall send a copy of the summons to his commanding officer for the purpose of being served on him.

The officer to whom such copy is sent, after causing it to be served on the person to whom it is addressed, if practicable, shall return it to the Court with the written acknowledgment of such person endorsed thereon.

If from any cause the copy cannot be so served, it shall be returned to the Court by which it was sent, with information of the cause which has prevented the service.

Execution of warrant of arrest in cantonments, &c.

469. If, in the execution of a decree, a warrant of arrest or other process is to be executed within the limits of a cantonment, garrison, military station or military bázár, the officer charged with the execution of such warrant or other process shall deliver the same to the commanding officer.

The commanding officer shall back the warrant or other process with his signature, and, in the case of a warrant of arrest, if the person named therein is within the limits of his command, shall cause him to be arrested and delivered to the officer so charged.

CHAPTER XXXIII.

INTERPLEADER.

When interpleader-suit may be instituted.

470. When two or more persons claim adversely to one another the same payment or property from another person, whose only interest therein is that of a

a mere stakeholder and who is ready to render it to the right owner, such stakeholder may institute a suit of interpleader against all the claimants for the purpose of obtaining a decision as to whom the payment or property should be made or delivered, and of obtaining indemnity for himself:

Provided that if any suit is pending in which the rights of all parties can properly be decided, the stakeholder shall not institute a suit of interpleader.

Plaint in such suit.

471. In every suit of interpleader the plaint must, in addition to the other statements necessary for plaints, state—

(*a*) that the plaintiff has no interest in the thing claimed otherwise than as a mere stakeholder;

(*b*) the claims made by the defendants severally; and

(*c*) that there is no collusion between the plaintiff and any of the defendants.

Payment of thing claimed into Court.

472. When the thing claimed is capable of being paid into court or placed in the custody of the Court, the plaintiff must so pay or place it before he can be entitled to any order in the suit.

Procedure at first hearing.

473. At the first hearing the Court may—

(*a*) declare that the plaintiff is discharged from all liability to the defendants in respect of the thing claimed, award him his costs, and dismiss him from the suit;

or, if it thinks that justice or convenience so require,

(*b*) retain all parties until the final disposal of the suit;

and, if it finds that the admissions of the parties or other evidence enable it,

(*c*) adjudicate the title to the thing claimed: or else it may

(*d*) direct the defendants to interplead one another by filing statements and entering into evidence for the purpose of bringing their respective claims before the Court, and shall adjudicate on such claims.

474. Nothing

When agents and tenants may institute interpleader-suits.

474. Nothing in this chapter shall be taken to enable agents to sue their principals, or tenants to sue their landlords, for the purpose of compelling them to interplead with any persons other than persons making claim through such principals or landlords.

Illustrations.

(*a*) A deposits a box of jewels with B as his agent. C alleges that the jewels were wrongfully obtained from him by A, and claims them from B. B cannot institute an interpleader-suit against A and C.

(*b*) A deposits a box of jewels with B as his agent. He then writes to C for the purpose of making the jewels a security for a debt due from himself to C. A afterwards alleges that C's debt is satisfied, and C alleges the contrary. Both claim the jewels from B. B may institute an interpleader-suit against A and C.

Charge of plaintiff's costs.

475. When the suit is properly instituted, the Court may provide for the plaintiff's costs by giving him a charge on the thing claimed or in some other effectual way.

Procedure where defendant is suing stakeholder.

476. If any of the defendants in an interpleader-suit is actually suing the stakeholder in respect of the subject of such suit, the Court in which the suit against the stakeholder is pending shall, on being duly informed by the Court which passed the decree in the interpleader-suit in favour of the stakeholder, that such decree has been passed, stay the proceedings as against him; and his costs in the suit so stayed may be provided for in such suit; but if, and so far as, they are not provided for in that suit, they may be added to his costs incurred in the interpleader-suit.

Costs.

PART IV.

PROVISIONAL REMEDIES.

CHAPTER XXXIV.

OF ARREST AND ATTACHMENT BEFORE JUDGMENT.

A.—Arrest before Judgment.

When plaint-

477. If at any stage of any suit, other than a suit for

for the possession of immoveable property, the plaintiff satisfies the Court by affidavit or otherwise—

iff may apply that security be taken.

that the defendant, with intent to avoid or delay the plaintiff, or to avoid any process of the Court, or to obstruct or delay the execution of any decree that may be passed against him,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under circumstances affording reasonable probability that the plaintiff will or may thereby be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the plaintiff may apply to the Court that security be taken for the appearance of the defendant to answer any decree that may be passed against him in the suit.

478. If the Court, after examining the applicant, and making such further investigation as it thinks fit, is satisfied—

Order to bring up defendant to show cause why he should not give security.

that the defendant, with any such intent as aforesaid,

(*a*) has absconded or left the jurisdiction of the Court, or

(*b*) is about to abscond or to leave the jurisdiction of the Court, or

(*c*) has disposed of or removed from the jurisdiction of the Court his property or any part thereof, or

that the defendant is about to leave British India under the circumstances last aforesaid,

the Court may issue a warrant to arrest the defendant and bring him before the Court to show cause why he should not give security for his appearance.

479. If the defendant fail to show such cause, the Court shall order him either to deposit in court money

If defendant fail to show cause, Court

or

may order him to make deposit or give security.

or other property sufficient to answer the claim against him, or to give security for his appearance at any time when called upon while the suit is pending, and until execution or satisfaction of any decree that may be passed against him in the suit.

The surety shall bind himself, in default of such appearance, to pay any sum of money which the defendant may be ordered to pay in the suit.

Procedure in case of application by surety to be discharged.

480. The surety for the appearance of the defendant may at any time apply to the Court in which he became such surety to be discharged from his obligation.

On such application being made, the Court shall summon the defendant to appear, or, if it thinks fit, may issue a warrant for his arrest in the first instance.

On the appearance of the defendant, pursuant to the summons or warrant, or on his voluntary surrender, the Court shall direct the surety to be discharged from his obligation, and shall call upon the defendant to find fresh security.

Procedure where defendant fails to give security or find fresh security.

481. If the defendant fail to comply with any order under section 479 or section 480, the Court may commit him to jail until the decision of the suit, or, if judgment be given against the defendant, until the execution of the decree: provided that no person shall be imprisoned under this section in any case for a longer period than six months, nor for a longer period than six weeks when the amount or value of the subject-matter of the suit does not exceed fifty rupees:

Provided that no person shall be detained in prison under this section after he has complied with such order.

Subsistence of defendants arrested.

482. The provisions of section 339 as to allowances payable for the subsistence of judgment-debtors shall apply to all defendants arrested under this chapter.

B.—Attachment before Judgment.

Application before judgment for security from defendant to satisfy decree, and in default for attachment of property.

483. If at any stage of any suit the plaintiff satisfies the Court by affidavit or otherwise that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him,

(*a*) is about to dispose of the whole or any part of his

his property, or to remove the same from the jurisdiction of the Court in which the suit is pending, or

(*b*) has quitted the jurisdiction of the Court, leaving therein property belonging to him,

the plaintiff may apply to the Court to call upon the defendant to furnish security to satisfy any decree that may be passed against him in such suit and, on his failing to give such security, to direct that any portion of his property within the jurisdiction of the Court shall be attached until the further order of the Court.

Contents of application.

The application shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

Court may call on defendant to furnish security or show cause.

484. If the Court, after examining the applicant and making any further investigation which it thinks fit, is satisfied that the defendant is about to dispose of or remove his property, with intent to obstruct or delay the execution of any decree that may be passed against him in the suit, or that he has with such intent quitted the jurisdiction of the Court, leaving therein property belonging to him, the Court may require him, within a time to be fixed by the Court, either to furnish security in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the sum, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

The Court may also in the order direct the conditional attachment of the whole or any portion of the property specified in the application.

Attachment if cause not shown or security not furnished.

485. If the defendant fail to show cause why he should not furnish security, or fail to furnish the security required, within the time fixed by the Court, the Court may order that the property specified in the application, or such portion thereof as appears sufficient to satisfy any decree which may be passed in the suit, shall be attached.

If

Withdrawal of attachment.

If the defendant show such cause or furnish the required security, and the property specified in the application or any portion of it has been attached, the Court shall order the attachment to be withdrawn.

Mode of making attachment.

486. The attachment shall be made in the manner herein provided for the attachment of property in execution of a decree for money.

Investigation of claims to property attached before judgment.

487. If any claim be preferred to the property attached before judgment, such claim shall be investigated in the manner hereinbefore provided for the investigation of claims to property attached in execution of a decree for money.

Removal of attachment when security furnished or suit dismissed.

488. When an order of attachment before judgment is passed, the Court which passed the order shall remove the attachment whenever the defendant furnishes the security required, together with security for the costs of the attachment, or when the suit is dismissed.

Attachment not to affect rights of strangers, or bar decree-holder from applying for sale.

489. Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree.

Property attached under chapter not to be re-attached in execution of decree.

490. Where property is under attachment by virtue of the provisions of this chapter, and a decree is given in favour of the plaintiff, it shall not be necessary to re-attach the property in execution of such decree.

C.—Compensation for improper Arrests or Attachments.

Compensation for obtaining arrest or attachment on insufficient grounds.

491. If in any suit in which an arrest or attachment has been effected, it appears to the Court that such arrest or attachment was applied for on insufficient grounds,

or if the suit of the plaintiff fails, and it appears to the Court that there was no probable ground for instituting the suit,

the Court may, on the application of the defendant, award against the plaintiff in its decree such amount, not

not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the arrest or attachment:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation. Proviso.

An award under this section shall bar any suit for compensation in respect of such arrest or attachment.

CHAPTER XXXV.

OF TEMPORARY INJUNCTIONS AND INTERLOCUTORY ORDERS.

A.—Temporary Injunctions.

492. If in any suit it is proved by affidavit or otherwise— Cases in which temporary injunction may be granted.

(*a*) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

(*b*) that the defendant threatens, or is about, to remove or dispose of his property with intent to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act, or give such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, or refuse such injunction or other order.

493. In any suit for restraining the defendant from committing a breach of contract or other injury, whether compensation be claimed in the suit or not, the plaintiff may, at any time after the commencement of the suit, and either before or after judgment, apply to the Court for a temporary injunction to restrain the defendant from committing the breach of contract or injury complained of, or any breach of contract or Injunction to restrain repetition or continuance of breach.

injury

injury of a like kind arising out of the same contract or relating to the same property or right.

The Court may by order grant such injunction on such terms as to the duration of the injunction, keeping an account, giving security, or otherwise, as the Court thinks fit, or refuse the same.

In case of disobedience, an injunction granted under this section or section 492 may be enforced by the imprisonment of the defendant for a term not exceeding six months, or the attachment of his property, or both.

No attachment under this section shall remain in force for more than one year, at the end of which time, if the defendant has not obeyed the injunction, the property attached may be sold, and out of the proceeds the Court may award to the plaintiff such compensation as it thinks fit, and may pay the balance, if any, to the defendant.

Before granting injunction, Court to direct notice to opposite party.

494. The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.

Injunction to Corporation binding on its members and officers.

495. An injunction directed to a Corporation or public Company is binding not only on the Corporation or Company itself, but also on all members and officers of the Corporation or Company whose personal action it seeks to restrain.

Order for injunction may be discharged, varied or set aside.

496. Any order for an injunction may be discharged, or varied, or set aside by the Court, on application made thereto by any party dissatisfied with such order.

Compensation to defendant for issue of injunction on insufficient grounds.

497. If it appears to the Court that an injunction which it has granted was applied for on insufficient grounds, or

if, after the issue of the injunction, the suit is dismissed or judgment is given against the plaintiff by default or otherwise, and it appears to the Court that there was no probable ground for instituting the suit, the

the Court may, on the application of the defendant, award against the plaintiff in its decree such sum, not exceeding one thousand rupees, as it deems a reasonable compensation to the defendant for the expense or injury caused to him by the issue of the injunction:

Provided that the Court shall not award under this section a larger amount than it might decree in a suit for compensation. Proviso.

An award under this section shall bar any suit for compensation in respect of the issue of the injunction.

B.—Interlocutory Orders.

498. The Court may, on the application of any party to a suit, order the sale, by any person named in such order, and in such manner and on such terms as it thinks fit, of any moveable property, being the subject of such suit, which is subject to speedy and natural decay. Power to order interim sale of perishable articles.

499. The Court may, on the application of any party to a suit, and on such terms as it thinks fit, Power to make order for detention, &c., of subject-matter, and to authorize entry, taking of samples and experiments.

(*a*) make an order for the detention, preservation or inspection of any property being the subject of such suit;

(*b*) for all or any of the purposes aforesaid authorize any person to enter upon or into any land or building in the possession of any other party to such suit, and

(*c*) for all or any of the purposes aforesaid, authorize any samples to be taken, or any observation to be made or experiment to be tried, which may seem necessary or expedient for the purpose of obtaining full information or evidence.

The provisions hereinbefore contained as to execution of process shall apply, *mutatis mutandis*, to persons authorized to enter under this section.

500. An application by the plaintiff for an order under section 498 or section 499 may be made after notice in writing to the defendant at any time after service of the summons. Application for such orders to be after notice.

An

An application by the defendant for a like order may be made after notice in writing to the plaintiff, and at any time after the applicant has appeared.

When party may be put in immediate possession of land the subject of suit.

501. When land paying revenue to Government, or a tenure liable to sale, is the subject of a suit, if the party in possession of such land or tenure neglects to pay the Government-revenue, or the rent due to the proprietor of the tenure, as the case may be, and such land or tenure is consequently ordered to be sold, any other party to the suit claiming to have an interest in such land or tenure may upon payment of the revenue or rent due previously to the sale (and with or without security at the discretion of the Court), be put in immediate possession of the land or tenure;

and the Court in its decree may award against the defaulter the amount so paid, with interest thereupon at such rate as the Court thinks fit, or may charge the amount so paid, with interest thereupon at such rate as the Court orders, in any adjustment of accounts which may be directed in the decree passed in the suit.

Deposit of money, &c., in court.

502. When the subject-matter of a suit is money or some other thing capable of delivery, and any party thereto admits that he holds such money or other thing as a trustee for another party, or that it belongs or is due to another party, the Court may order the same to be deposited in court or delivered to such last-named party, with or without security, subject to the further direction of the Court.

CHAPTER XXXVI.

APPOINTMENT OF RECEIVERS.

Power of Court to appoint Receivers.

503. Whenever it appears to the Court to be necessary for the realization, preservation or better custody or management of any property, moveable or immoveable, the subject of a suit, or under attachment, the Court may by order—

(*a*) appoint a Receiver of such property,

and,

and, if need be,

(*b*) remove the person in whose possession or custody the property may be from the possession or custody thereof;

(*c*) commit the same to the custody or management of such Receiver; and

(*d*) grant to such Receiver such fee or commission on the rents and profits of the property by way of remuneration, and all such powers as to bringing and defending suits, and for the realization, management, protection, preservation and improvement of the property, the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of instruments in writing, as the owner himself has, or such of those powers as the Court thinks fit.

Every Receiver so appointed shall— Receiver's liabilities.

(*e*) give such security (if any) as the Court thinks fit duly to account for what he shall receive in respect of the property;

(*f*) pass his accounts at such periods and in such form as the Court directs;

(*g*) pay the balance due from him thereon as the Court directs; and

(*h*) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

Nothing in this section authorizes the Court to remove from the possession or custody of property under attachment any person whom the parties to the suit, or some or one of them, have or has not a present right so to remove.

504. Where the property is land paying revenue to Government, or land of which the revenue has been assigned or redeemed, and the Court considers that the interests of those concerned will be promoted by the management of the Collector, the Court may appoint the Collector to be Receiver of such property. When Collector may be appointed Receiver.

505. The powers conferred by this chapter shall be exercised only by High Courts and District Courts: Courts empowered under this chapter.

provided

provided that whenever the Judge of a Court subordinate to a District Court considers it expedient that a Receiver should be appointed in any suit before him, he shall nominate such person as he considers fit for such appointment, and submit such person's name, with the grounds for the nomination, to the District Court, and the District Court shall authorize such Judge to appoint the person so nominated, or pass such other order as it thinks fit.

PART V.

OF SPECIAL PROCEEDINGS.

CHAPTER XXXVII.

REFERENCE TO ARBITRATION.

Parties to suit may apply for order of reference.

506. If all the parties to a suit desire that any matter in difference between them in the suit be referred to arbitration, they may, at any time before judgment is pronounced, apply, in person or by their respective pleaders specially authorized in writing in this behalf, to the Court for an order of reference.

Every such application shall be in writing and shall state the particular matter sought to be referred.

Nomination of arbitrator.

507. The arbitrator shall be nominated by the parties in such manner as may be agreed upon between them.

When Court to nominate arbitrator.

If the parties cannot agree with respect to such nomination, or if the person whom they nominate refuses to accept the arbitration, and the parties desire that the nomination shall be made by the Court, the Court shall nominate the arbitrator.

Order of reference.

508. The Court shall, by order, refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award, and specify such time in the order.

When

When once a matter is referred to arbitration, the Court shall not deal with it in the same suit, except as hereinafter provided.

509. If the reference be to two or more arbitrators, provision shall be made in the order for a difference of opinion among the arbitrators,

When reference is to two or more, order to provide for difference of opinion.

(*a*) by the appointment of an umpire, or

(*b*) by declaring that the decision shall be with the majority, if the major part of the arbitrators agree, or

(*c*) by empowering the arbitrators to appoint an umpire, or

(*d*) otherwise, as may be agreed between the parties; or, if they cannot agree, as the Court determines.

If an umpire is appointed, the Court shall fix such time as it thinks reasonable for the delivery of his award in case he is required to act.

510. If the arbitrator, or, where there are more arbitrators than one, any of the arbitrators, or the umpire, dies, or refuses, or neglects or becomes incapable to act, or leaves British India under circumstances showing that he will probably not return at an early date, the Court may in its discretion either appoint a new arbitrator or umpire in the place of the person so dying, or refusing, or neglecting, or becoming incapable to act, or leaving British India, or make an order superseding the arbitration, and in such case shall proceed with the suit.

Death, incapacity, &c., of arbitrators or umpire.

511. Where the arbitrators are empowered by the order of reference to appoint an umpire and fail to do so, any of the parties may serve the arbitrators with a written notice to appoint an umpire; and if, within seven days after such notice has been served, or such further time as the Court may in each case allow, no umpire be appointed, the Court, upon the application of the party who has served such notice as aforesaid, may appoint an umpire.

Appointment of umpire by Court.

512. Every arbitrator or umpire appointed under section

Powers of arbitrator or

umpire appointed under sections 509, 510, 511.

section 509, section 510 or section 511 shall have the like powers as if his name had been inserted in the order of reference.

Summoning witnesses.

513. The Court shall issue the same processes to the parties and witnesses whom the arbitrators or umpire desire or desires to examine, as the Court may issue in suits tried before it.

Punishment for default, &c.

Persons not attending in accordance with such process, or making any other default, or refusing to give their evidence, or guilty of any contempt to the arbitrator or umpire during the investigation of the matters referred, shall be subject to the like disadvantages, penalties and punishments, by order of the Court on the representation of the arbitrator or umpire, as they would incur for the like offences in suits tried before the Court.

Extension of time for making award.

Supersession of arbitration.

514. If, from the want of the necessary evidence or information, or from any other cause, the arbitrators cannot complete the award within the period specified in the order, the Court may, if it thinks fit, either grant a further time, and from time to time enlarge the period for the delivery of the award, or make an order superseding the arbitration, and in such case shall proceed with the suit.

When umpire may arbitrate in lieu of arbitrators.

515. When an umpire has been appointed he may enter on the reference in the place of the arbitrators,

(*a*) if they have allowed the appointed time to expire without making an award, or

(*b*) when they have delivered to the Court or to the umpire a notice in writing, stating that they cannot agree.

Award to be signed and filed.

516. When an award in a suit has been made, the persons who made it shall sign it and cause it to be filed in court, together with any depositions and documents which have been taken and proved before them; and notice of the filing shall be given to the parties.

Arbitrators or umpire may state special case.

517. Upon any reference by an order of the Court, the arbitrators or umpire may, with the consent of the Court, state the award as to the whole or any part thereof

thereof in the form of a special case for the opinion of the Court; and the Court shall deliver its opinion thereon; and such opinion shall be added to and form part of the award.

518. The Court may, by order, modify or correct an award,

Court may, on application, modify or correct award in certain cases.

(*a*) where it appears that a part of the award is upon a matter not referred to arbitration, provided such part can be separated from the other part and does not affect the decision on the matter referred, or

(*b*) where the award is imperfect in form, or contains any obvious error which can be amended without affecting such decision.

519. The Court may also make such order as it thinks fit respecting the costs of the arbitration, if any question arise respecting such costs and the award contain no sufficient provision concerning them.

Order as to costs of arbitration.

520. The Court may remit the award or any matter referred to arbitration to the reconsideration of the same arbitrators or umpire, upon such terms as it thinks fit,

When award or matter referred to arbitration may be remitted.

(*a*) where the award has left undetermined any of the matters referred to arbitration, or where it determines any matter not referred to arbitration;

(*b*) where the award is so indefinite as to be incapable of execution;

(*c*) where an objection to the legality of the award is apparent upon the face of it.

521. An award remitted under section 520 becomes void on the refusal of the arbitrators or umpire to reconsider it. But no award shall be set aside except on one of the following grounds (namely) —

Grounds for setting aside award.

(*a*) corruption or misconduct of the arbitrator or umpire;

(*b*) either party having been guilty of fraudulent concealment of any matter which he ought to have disclosed, or of wilfully misleading or deceiving the arbitrator or umpire;

(*c*) the

(*c*) the award having been made after the issue of an order by the Court superseding the arbitration and restoring the suit;

and no award shall be valid unless made within the period allowed by the Court.

Judgment to be according to award.

522. If the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration in manner aforesaid, and if no application has been made to set aside the award, or if the Court has refused such application,

the Court shall, after the time for making such application has expired, proceed to give judgment according to the award,

or, if the award has been submitted to it in the form of a special case, according to its own opinion on such case.

Decree to follow.

Upon the judgment so given a decree shall follow, and shall be enforced in manner provided in this Code for the execution of decrees. No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award.

Agreement to refer to arbitration may be filed in court.

523. When any persons agree in writing that any difference between them shall be referred to the arbitration of any person named in the agreement or to be appointed by any court having jurisdiction in the matter to which the agreement relates, the parties thereto, or any of them, may apply that the agreement be filed in court.

Application to be numbered and registered.

The application shall be in writing and shall be numbered and registered as a suit between one or more of the parties interested or claiming to be interested as plaintiff or plaintiffs, and the others or other of them as defendants or defendant, if the application have been presented by all the parties, or, if otherwise, between the applicant as plaintiff and the other parties as defendants.

Notice to show cause against filing.

On such application being made, the Court shall direct notice thereof to be given to all the parties to the agreement other than the applicants, requiring such

such parties to show cause, within the time specified in the notice, why the agreement should not be filed.

If no sufficient cause be shown, the Court may cause the agreement to be filed, and shall make an order of reference thereon, and may also nominate the arbitrator, when he is not named therein and the parties cannot agree as to the nomination.

524. The foregoing provisions of this chapter, so far as they are consistent with any agreement so filed, shall be applicable to all proceedings under an order of reference made by the Court under section 523, and to the award of arbitration and to the enforcement of the decree founded thereupon.

Provisions of chapter applicable to proceedings under order of reference.

525. When any matter has been referred to arbitration without the intervention of a Court of Justice, and an award has been made thereon, any person interested in the award may apply to the Court of the lowest grade having jurisdiction over the matter to which the award relates, that the award be filed in court.

Filing award in matter referred to arbitration without intervention of Court.

The application shall be in writing and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants.

Application to be numbered and registered.

The Court shall direct notice to be given to the parties to the arbitration, other than the applicant, requiring them to show cause, within a time specified, why the award should not be filed.

Notice to parties to arbitration.

526. If no ground such as is mentioned or referred to in section 520 or section 521, be shown against the award, the Court shall order it to be filed, and such award shall then take effect as an award made under the provisions of this chapter.

Filing and enforcement of such award.

CHAPTER XXXVIII.

Of Proceedings on Agreement of Parties.

527. Parties claiming to be interested in the decision of any question of fact or law, may enter into an agreement in writing stating such question in the form

Power to state case for Court's opinion.

form of a case for the opinion of the Court, and providing that, upon the finding of the Court with respect to such question,

(*a*) a sum of money fixed by the parties or to be determined by the Court, shall be paid by one of the parties to the other of them; or

(*b*) some property, moveable or immoveable, specified in the agreement, shall be delivered by one of the parties to the other of them; or

(*c*) one or more of the parties shall do, or refrain from doing some other particular act specified in the agreement.

Every case stated under this section shall be divided into consecutively numbered paragraphs, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the question raised thereby.

When value of subject-matter must be stated.

528. If the agreement is for the delivery of any property, or for the doing, or the refraining from doing, any particular act, the estimated value of the property to be delivered, or to which the act specified has reference, shall be stated in the agreement.

Agreement to be filed and numbered as suit.

529. The agreement, if framed in accordance with the rules hereinbefore contained, may be filed in the Court which would have jurisdiction to entertain a suit, the amount or value of the subject-matter of which is the same as the amount or value of the subject-matter of the agreement.

The agreement, when so filed, shall be numbered and registered as a suit between one or more of the parties claiming to be interested, as plaintiff or plaintiffs, and the other or others of them as defendant or defendants; and notice shall be given to all the parties to the agreement, other than the party or parties by whom it was presented.

Parties to be subject to Court's jurisdiction.

530. When the agreement has been filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by the statements contained therein.

531. The

531. The case shall be set down for hearing as a suit instituted under chapter V, the provisions of which shall apply to such suit so far as the same are applicable. Hearing and disposal of case.

If the Court is satisfied, after an examination of the parties, or after taking such evidence as it thinks fit,

(*a*) that the agreement was duly executed by them, and

(*b*) that they have a *bonâ fide* interest in the question stated therein, and

(*c*) that the same is fit to be decided,

it shall proceed to pronounce judgment thereon, in the same way as in an ordinary suit, and upon the judgment so given a decree shall follow and shall be enforced in the manner provided in this Code for the execution of decrees.

CHAPTER XXXIX.

Of summary Procedure on Negotiable Instruments.

532. In any Court to which this section applies all suits upon bills of exchange, hundís or promissory notes may, in case the plaintiff desires to proceed under this chapter, be instituted by presenting a plaint in the form prescribed by this Code; but the summons shall be in the form contained in the fourth schedule hereto annexed, No. 172, or in such other form as the High Court may from time to time prescribe. Institution of summary suits upon bills of exchange, &c.

In any case in which the plaint and summons are in such forms respectively, the defendant shall not appear or defend the suit unless he obtains leave from a Judge as hereinafter mentioned so to appear and defend;

and in default of his obtaining such leave or of appearance and defence in pursuance thereof, the plaintiff shall be entitled to a decree for any sum not exceeding

exceeding the sum mentioned in the summons, together with interest at the rate specified (if any) to the date of the decree, and a sum for costs to be fixed by a rule of the High Court, unless the plaintiff claims more than such fixed sum, in which case the costs shall be ascertained in the ordinary way, and such decree may be enforced forthwith.

Payment into Court of sum mentioned in summons.

The defendant shall not be required to pay into Court the sum mentioned in the summons, or to give security therefor, unless the Court thinks his defence not to be *primâ facie* sustainable, or feels reasonable doubt as to its good faith.

Explanation.—This section is not confined to cases in which the bill, hundí or note sued upon, together with mere lapse of time, is sufficient to establish a *primâ facie* right to recover.

Defendant showing defence on merits to have leave to appear.

533. The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon the defendant paying into court the sum mentioned in the summons, or upon affidavits satisfactory to the Court, which disclose a defence or such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application, and on such terms as to security, framing and recording issues, or otherwise, as the Court thinks fit.

Power to set aside decree.

534. After decree, the Court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to appear to the summons and to defend the suit, if it seem reasonable to the Court so to do, and on such terms as the Court thinks fit.

Power to order bill, &c., to be deposited with officer of Court.

535. In any proceeding under this chapter the Court may order the bill, hundí or note on which the suit is founded to be forthwith deposited with an officer of the Court, and may further order that all proceedings shall be stayed until the plaintiff gives security for the costs thereof.

Recovery of cost of noting non-ac-

536. The holder of every dishonoured bill of exchange or promissory note shall have the same remedies

dies for the recovery of the expenses incurred in noting the same for non-acceptance or non-payment, or otherwise, by reason of such dishonour, as he has under this chapter for the recovery of the amount of such bill or note.

ceptance of dishonoured bill or note.

537. Except as provided by sections 532 to 536 (both inclusive), the procedure in suits under this chapter shall be the same as the procedure in suits instituted under chapter V.

Procedure in suits under chapter.

538. Sections 532 to 537 (both inclusive) apply only to—

Application of chapter.

(*a*) the High Courts of Judicature at Fort William, Madras and Bombay;

(*b*) the Court of the Recorder of Rangoon;

(*c*) the Courts of Small Causes in Calcutta, Madras and Bombay;

(*d*) the Court of the Judge of Karáchí; and

(*e*) any other Court having ordinary original civil jurisdiction to which the Local Government may, by notification in the official Gazette, apply them.

In case of such application the Local Government may direct by whom any of the powers and duties incident to the provisions so applied shall be exercised and performed, and make any rules which it thinks requisite for carrying into operation the provisions so applied.

Within one month after such notification has been published, such provisions shall apply accordingly, and the rules so made shall have the force of law.

The Local Government may, from time to time, alter or cancel any such notification.

CHAPTER XL.

Of Suits relating to Public Charities.

539. In case of any alleged breach of any express or constructive trusts created for public charitable or religious purposes, or whenever the direction of the Court

When suits relating to public charities may be brought.

Court is deemed necessary for the administration of any such trust, the Advocate General acting *ex officio*, or two or more persons having a direct interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit in the High Court or the District Court within the local limits of whose civil jurisdiction the whole or any part of the subject-matter of the trust is situate, to obtain a decree—

(*a*) appointing new trustees under the trust;

(*b*) vesting any property in the trustees under the trust;

(*c*) declaring the proportions in which its objects are entitled;

(*d*) authorizing the whole or any part of its property to be let, sold, mortgaged or exchanged;

(*e*) settling a scheme for its management;

or granting such further or other relief as the nature of the case may require.

The powers conferred by this section on the Advocate General may, outside the Presidency-towns, be, with the previous sanction of the Local Government, exercised also by the Collector or by such officer as the Local Government may appoint in this behalf.

Act No. X of 1840, section two, is hereby repealed.

PART VI.

OF APPEALS.

CHAPTER XLI.

OF APPEALS FROM ORIGINAL DECREES.

Appeal to lie from all original decrees, except when expressly prohibited.

540. Unless when otherwise expressly provided by this Code or by any other law for the time being in force, an appeal shall lie from the decrees, or from any part of the decrees, of the Courts exercising original

original jurisdiction to the Courts authorized to hear appeals from the decisions of those Courts.

Form of appeal.

What to accompany memorandum.

541. The appeal shall be made in the form of a memorandum in writing presented by the appellant, and shall be accompanied by a copy of the decree appealed against and (unless the Appellate Court dispenses therewith) of the judgment on which it is founded.

Contents of memorandum.

Such memorandum shall set forth, concisely and under distinct heads, the grounds of objection to the decree appealed against, without any argument or narrative; and such grounds shall be numbered consecutively.

Appellant confined to grounds set out.

542. The appellant shall not, without the leave of the Court, urge or be heard in support of any other ground of objection, but the Court in deciding the appeal shall not be confined to the grounds set forth by the appellant:

Provided that the Court shall not rest its decision on any ground not set forth by the appellant, unless the respondent has had sufficient opportunity of contesting the case on that ground.

Rejection or amendment of memorandum.

543. If the memorandum of appeal be not drawn up in the manner hereinbefore prescribed, it may be rejected, or be returned to the appellant for the purpose of being amended within a time to be fixed by the Court or be amended then and there.

When the Court rejects under this section any memorandum, it shall record the reasons for such rejection.

When a memorandum of appeal is amended under this section, the Judge, or such officer as he appoints in this behalf, shall attest the amendment by his signature.

One of several plaintiffs or defendants may obtain reversal of whole decree if it proceed on ground common to all.

544. Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed against proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal against the whole decree, and thereupon the Appellate Court may

may reverse or modify the decree in favour of all the plaintiffs or defendants, as the case may be.

Of staying and executing Decrees under Appeal.

Execution of decree not stayed solely by reason of appeal.

545. Execution of a decree shall not be stayed by reason only of an appeal having been preferred against the decree; but the Appellate Court may for sufficient cause order the execution to be stayed:

Stay of execution of appealable decree before time for appealing has expired.

If an application be made for stay of execution of an appealable decree before the expiry of the time allowed for appealing therefrom, the Court which passed the decree may for sufficient cause order the execution to be stayed:

Provided that no order shall be made under this section unless the Court making it is satisfied—

(*a*) that substantial loss may result to the party applying for stay of execution unless the order is made;

(*b*) that the application has been made without unreasonable delay; and

(*c*) that security has been given by the applicant for the due performance of such decree or order as may ultimately be binding upon him.

Security in case of order for execution of decree appealed against.

546. If an order is made for the execution of a decree against which an appeal is pending, the Court which passed the decree shall, on sufficient cause being shown by the appellant, require security to be given for the restitution of any property which may be taken in execution of the decree, or for the payment of the value of such property and for the due performance of the decree or order of the Appellate Court,

or the Appellate Court may for like cause direct the Court which passed the decree to take such security.

And when an order has been passed for the sale of immoveable property in execution of a decree for money, and an appeal is pending against such decree, the sale shall on the application of the judgment-debtor be stayed until the appeal is disposed of, on such

such terms as to giving security or otherwise as the Court which passed the decree thinks fit.

547. No such security as is mentioned in sections 545 and 546 shall be required from the Secretary of State for India in Council, or (when Government has undertaken the defence of the suit) from any public officer sued in respect of an act alleged to be done by him in his official capacity.

No such security to be required from Government or public officers.

Of Procedure in Appeal from Decrees.

548. When a memorandum of appeal is admitted, the Appellate Court or the proper officer of that Court shall endorse thereon the date of presentation, and shall register the appeal in a book to be kept for the purpose.

Registry of memorandum of appeal.

Such book shall be called the Register of Appeals.

Register of appeals.

549. The Appellate Court may at its discretion, either before the respondent is called upon to appear and answer or afterwards on the application of the respondent, demand from the appellant security for the costs of the appeal, or of the original suit, or of both:

Appellate Court may require appellant to give security for costs.

Provided that the Court shall demand such security in all cases in which the appellant is residing out of British India, and is not possessed of any sufficient immoveable property within British India independent of the property (if any) to which the appeal relates.

When appellant resides out of British India.

If such security be not furnished within such time as the Court orders, the Court shall reject the appeal.

550. When the memorandum of appeal is registered, the Appellate Court shall send notice of the appeal to the Court against whose decree the appeal is made.

Appellate Court to give notice to Court whose decree appealed against.

If the appeal be from a Court the records of which are not deposited in the Appellate Court, the Court receiving such notice shall send with all practicable despatch all material papers in the suit, or such papers as may be specially called for by the Appellate Court.

Transmission of papers to Appellate Court.

Either

Copies of exhibits in Court whose decree appealed against.

Either party may apply in writing to the Court against whose decree the appeal is made, specifying any of such papers in such Court of which he requires copies to be made; and copies of such papers shall be made at the expense of the applicant, and shall be deposited accordingly.

Power to confirm decision of lower Court without sending it notice.

551. The Appellate Court may, if it thinks fit, after fixing a time for hearing the appellant or his pleader, and hearing him accordingly if he appears at such time, confirm the decision of the Court against whose decree the appeal is made, without sending notice of the appeal to such Court and without serving notice on the respondent or his pleader; but in such case the confirmation shall be notified to the same Court.

Day for hearing appeal.

552. The Appellate Court, unless where it confirms, under section 551, the decision of the lower Court, shall fix a day for hearing the appeal.

Such day shall be fixed with reference to the current business of the Court, the place of residence of the respondent, and the time necessary for the service of the notice of appeal, so as to allow the respondent sufficient time to appear and answer the appeal on such day.

Publication and service of notice of day for hearing appeal.

553. Notice of the day so fixed shall be stuck up in the appellate court-house, and a like notice shall be sent by the Appellate Court to the Court against whose decree the appeal is made, and shall be served on the respondent or on his pleader in the Appellate Court in the manner provided in chapter VI for the service on a defendant of a summons to appear and answer; and all rules applicable to such summons and to proceedings with reference to the service thereof, shall apply to the service of such notice.

Appellate Court may itself cause notice to be served.

Instead of sending the notice to the Court against whose decree the appeal is made, the Appellate Court may itself cause the notice to be served on the respondent or his pleader under the rules above referred to.

554. The

554. The notice to the respondent shall declare that, if he does not appear in the Appellate Court on the day so fixed, the appeal will be heard *ex parte.* Contents of notice.

Procedure on Hearing.

555. On the day so fixed, or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Court shall then, if it does not dismiss the appeal at once, hear the respondent against the appeal, and in such case the appellant shall be entitled to reply. Right to begin.

556. If on the day so fixed, or any other day to which the hearing may be adjourned, the appellant does not attend in person or by his pleader, the appeal shall be dismissed for default. Dismissal of appeal for appellant's default.

If the appellant attends and the respondent does not attend, the appeal shall be heard *ex parte* in his absence. Hearing appeal *ex parte.*

557. If on the day so fixed, or any other day to which the hearing may be adjourned, it is found that the notice to the respondent has not been served in consequence of the failure of the appellant to deposit, within the period fixed by the Court, the sum required to defray the cost of issuing the notice, the Court may order that the appeal be dismissed: Dismissal of appeal where notice not served in consequence of appellant's failure to deposit cost.

Provided that no such order shall be passed, although the notice has not been served upon the respondent, if on the day fixed for hearing the appeal the respondent appears in person or by a pleader, or by a duly authorized agent. Proviso.

558. If an appeal be dismissed under section 556 or section 557, the appellant may apply to the Appellate Court for the re-admission of the appeal; and if it be proved that he was prevented by any sufficient cause from attending when the appeal was called on for hearing or from depositing the sum so required, the Court may re-admit the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him. Re-admission of appeal dismissed for default.

559. If it appear to the Court at the hearing that any Power to ad-

journ hearing, and direct persons appearing interested to be made respondents.

any person who was a party to the suit in the Court against whose decree the appeal is made, but who has not been made a party to the appeal, is interested in the result of the appeal, the Court may adjourn the hearing to a future day to be fixed by the Court, and direct that such person be made a respondent.

Re-hearing on application of respondent against whom *ex parte* decree made.

560. When an appeal is heard *ex parte* in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that the notice was not duly served, or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Upon hearing, respondent may object to decree as if he had preferred separate appeal.

561. Any respondent, though he may not have appealed against any part of the decree, may upon the hearing not only support the decree on any of the grounds decided against him in the Court below, but take any objection to the decree which he could have taken by way of appeal, provided he has filed a notice of such objection not less than seven days before the date fixed for the hearing of the appeal.

Form of notice, and provisions applicable thereto.

Such objection shall be in the form of a memorandum, and the provisions of section 541, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

Remand of case by Appellate Court.

562. If the Court against whose decree the appeal is made has disposed of the suit upon a preliminary point so as to exclude any evidence of fact which appears to the Appellate Court essential to the determination of the rights of the parties, and the decree upon such preliminary point is reversed in appeal, the Appellate Court may, if it thinks fit, by order remand the case, together with a copy of the order in appeal, to the Court against whose decree the appeal is made, with directions to re-admit the suit under its original number in the register and proceed to investigate the suit on the merits.

The Appellate Court may, if it thinks fit, direct what

what issue or issues shall be tried in any case so remanded.

563. When a case is remanded with directions to take any evidence so excluded, the Court to which the case is remanded shall not take any other evidence in the case, except evidence tendered to contradict the evidence so taken.

When further evidence barred.

564. The Appellate Court shall not remand a case for a second decision, except as provided in section 562.

Limit to remand.

565. When the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court shall, after resettling the issues, if necessary, finally determine the case, notwithstanding that the judgment of the Court against whose decree the appeal is made has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

When evidence on record sufficient, Appellate Court shall determine case finally.

566. If the Court against whose decree the appeal is made has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits, and the evidence upon the record is not sufficient to enable the Appellate Court to determine such issue or question, the Appellate Court may frame issues for trial, and may refer the same for trial to the Court against whose decree the appeal is made, and in such case shall direct such Court to take the additional evidence required,

and such Court shall proceed to try such issues, and shall return to the Appellate Court its finding thereon together with the evidence.

When Appellate Court may frame issues and refer them for trial to Court whose decree appealed against.

567. Such finding and evidence shall become part of the record in the suit; and either party may, within a time to be fixed by the Appellate Court, present a memorandum of objections to the finding.

Finding evidence to be put on record. Objections to finding.

After the expiration of the period fixed for presenting such memorandum, the Appellate Court shall proceed to determine the appeal.

Determination of appeal.

568. The

Production of additional evidence in Appellate Court.

568. The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if

(*a*) the Court against whose decree the appeal is made refuses to admit evidence which ought to have been admitted, or

(*b*) the Appellate Court requires any document to be produced for any witness to be examined to enable it to pronounce judgment; or for any other substantial cause,

the Appellate Court may allow such evidence to be produced, or document to be received, or witness to be examined.

Whenever additional evidence is admitted by an Appellate Court, the Court shall record on its proceedings the reason for such admission.

Mode of taking additional evidence.

569. Whenever additional evidence is allowed to be received, the Appellate Court may either take such evidence, or direct the Court against whose decree the appeal is made, or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court.

Points to be defined and recorded.

570. In all cases where additional evidence is directed or allowed to be taken, the Appellate Court shall specify the points to which the evidence is to be confined, and record on its proceedings the points so specified.

Of the Judgment in Appeal.

Judgment when and where pronounced.

571. The Appellate Court, after hearing the parties or their pleaders and referring to any part of the proceedings, whether on appeal or in the Court against whose decree the appeal is made, to which reference may be considered necessary, shall pronounce judgment in open Court, either at once or on some future day, of which notice shall be given to the parties or their pleaders.

Language of judgment.

572. The judgment shall be written in English; provided that if English is not the mother-tongue of the Judge, and he is not able to write an intelligible judgment

judgment in English, the judgment shall be written in his mother-tongue or in the language of the Court.

Translation of judgment.

573. When the language in which the judgment is written is not the language of the Court, the judgment shall, if any party so require, be translated into such language, and the translation, after it has been ascertained to be correct, shall be signed by the Judge or such officer as he appoints in this behalf.

Contents of judgment.

574. The judgment of the Appellate Court shall state—

(*a*) the points for determination;

(*b*) the decision thereupon;

(*c*) the reasons for the decision; and

(*d*) when the decree appealed against is reversed or varied, the relief to which the appellant is entitled,

Date and signature.

and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

Decision when appeal heard by two or more Judges.

575. When the appeal is heard by a Bench of two or more Judges, the appeal shall be decided in accordance with the opinion of such Judges or of the majority (if any) of such Judges.

If there be no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed:

Provided that if the Bench hearing the appeal is composed of two Judges belonging to a Court consisting of more than two Judges, and the Judges composing the Bench differ in opinion on a point of law, the appeal may be referred to one or more of the other Judges of the same Court, and shall be decided according to the opinion of the majority (if any) of all the Judges who have heard the appeal, including those who first heard it.

When there is no such majority which concurs in a judgment varying or reversing the decree appealed against, such decree shall be affirmed.

The High Court may, from time to time, make rules

rules consistent with this Code to regulate references under this section.

Dissent to be recorded.

576. When the appeal is heard by more Judges than one, any Judge dissenting from the judgment of the Court shall state in writing the decision or order which he thinks should be passed on the appeal, and he may state his reasons for the same.

What judgment may direct.

577. The judgment may be for confirming, varying or reversing the decree against which the appeal is made, or, if the parties to the appeal agree as to the form which the decree in appeal shall take, or as to the order to be passed in appeal, the Appellate Court may pass a decree or order accordingly.

No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.

578. No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal, on account of any error, defect or irregularity, whether in the decision or in any order passed in the suit, or otherwise, not affecting the merits of the case or the jurisdiction of the Court.

Of the Decree in Appeal.

Date and contents of decree.

579. The decree of the Appellate Court shall bear date the day on which the judgment was pronounced.

The decree shall contain the number of the appeal, and the memorandum of appeal, including the names and description of the appellant and respondent, and shall specify clearly the relief granted or other determination of the appeal.

The decree shall also state the amount of costs incurred in the appeal, and by what parties and in what proportions such costs and the costs in the suit are to be paid.

The decree shall be signed and dated by the Judge or Judges who passed it:

Judge dissenting from judgment need not sign decree.

Provided that where there are more Judges than one, if there be a difference of opinion among them, it shall not be necessary for any Judge dissenting from the judgment of the Court to sign the decree.

580. Certified

580. Certified copies of the judgment and decree in appeal shall be furnished to the parties on application to the Court and at their expense.

Copies of judgment and decree to be furnished to parties.

581. A copy of the judgment and of the decree, certified by the Appellate Court or such officer as it appoints in this behalf, shall be sent to the Court which passed the decree appealed against, and shall be filed with the original proceedings in the suit, and an entry of the judgment of the appellate Court shall be made in the register of civil suits.

Certified copy of decree to be sent to Court whose decree appealed against.

582. The Appellate Court shall have, in appeals under this chapter, the same powers, and shall perform as nearly as may be the same duties, as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted under chapter V; and, in chapter XXI, so far as may be, the words "plaintiff," "defendant" and "suit" shall be held to include an appellant, a respondent and an appeal, respectively, in proceedings arising out of the death, marriage or insolvency of parties to an appeal.

Appellate Court to have same powers as Courts of original jurisdiction.

The provisions hereinbefore contained shall apply to appeals under this chapter so far as such provisions are applicable.

583. When a party entitled to any benefit (by way of restitution or otherwise) under a decree passed in an appeal under this chapter desires to obtain execution of the same, he shall apply to the Court which passed the decree against which the appeal was preferred; and such Court shall proceed to execute the decree passed in appeal, according to the rules hereinbefore prescribed for the execution of decrees in suits.

Execution of decree of Appellate Court.

CHAPTER XLII.

Of Appeals from Appellate Decrees.

584. Unless, when otherwise provided by this Code or by any other law, from all decrees passed in appeal

Second appeals to High Court.

appeal by any Court subordinate to a High Court, an appeal shall lie to the High Court on any of the following grounds (namely)—

Grounds of second appeal.

(*a*) the decision being contrary to some specified law or usage having the force of law;

(*b*) the decision having failed to determine some material issue of law or usage having the force of law;

(*c*) a substantial error or defect in the procedure as prescribed by this Code or any other law, which may possibly have produced error or defect in the decision of the case upon the merits.

Second appeal on no other grounds.

585. No second appeal shall lie except on the grounds mentioned in section 584.

No second appeal in certain suits.

586. No second appeal shall lie in any suit of the nature cognizable in Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed five hundred rupees.

Provisions as to second appeal.

587. The provisions contained in chapter XLI shall apply, as far as may be, to appeals under this chapter, and to the execution of decrees passed in such appeals.

CHAPTER XLIII.

Of Appeals from Orders.

Orders appealable.

588. An appeal shall lie from the following orders under this Code, and from no other such orders:—

(1) orders under section 20, staying proceedings in a suit;

(2) orders under section 32, striking out or adding the name of any person as plaintiff or defendant;

(3) orders under section 36 or section 66, directing that a party shall appear in person;

(4) orders under section 44, adding a cause of action;

(5) orders under section 47, excluding a cause of action;

(6) orders

(6) orders returning plaints for amendment or to be presented to the proper Court;

(7) orders under section 111, setting-off, or refusing to set-off, one debt against another;

(8) orders rejecting applications under section 103 (in cases open to appeal) for an order to set aside the dismissal of a suit;

(9) orders rejecting applications under section 108, or an order to set aside a decree *ex parte*;

(10) orders under sections 113, 120 and 177;

(11) orders under section 116 or section 245, rejecting, or returning for amendment, written statements or applications for execution of decrees;

(12) orders under sections 143 and 145, directing anything to be impounded;

(13) orders under section 162, for the attachment and sale of moveable property;

(14) orders under section 168 for attachment of property, and orders under section 170 for the sale of attached property;

(15) orders under section 261, as to objections to draft-conveyances or draft-endorsements;

(16) orders under section 294, the first paragraph of section 312 or section 313, for confirming, or setting aside, or refusing to set aside, a sale of immoveable property;

(17) orders in insolvency-matters, under section 351, section 352, section 353 or section 357;

(18) orders under section 366, paragraph two, section 367 or section 368;

(19) orders rejecting applications under section 370 for dismissal of a suit;

(20) orders under section 371, refusing to set aside the abatement or dismissal of a suit;

(21) orders disallowing objections under section 372;

(22) orders under section 454, section 455 or section

tion 458, directing a next friend or guardian for the suit to pay costs;

(23) orders in interpleader-suits under section 473, clause (*a*), (*b*) or (*d*), section 475 or section 476;

(24) orders under section 479, section 480, section 485, section 492, section 493, section 496, section 497, section 502 or section 503;

(25) orders under section 514, superseding an arbitration;

(26) orders under section 518, modifying an award;

(27) orders of refusal under section 558 to re-admit, or under section 560 to re-hear, an appeal;

(28) orders under section 562, remanding a case;

(29) orders under any of the provisions of this Code, imposing fines, or for the arrest or imprisonment of any person, except when such imprisonment is in execution of a decree.

The orders passed in appeals under this section shall be final.

What Courts to hear appeals.

589. An appeal from any order specified in section 588, clauses (15), (16) and (17), shall lie to the High Court.

When an appeal from any other order is allowed by this chapter, it shall lie to the Court to which an appeal would lie from the decree in the suit in relation to which such order was made, or, when such order is passed by a Court (not being a High Court) in the exercise of appellate jurisdiction, then to the High Court.

Procedure in appeals from orders.

590. The procedure prescribed in chapter XLI shall, so far as may be, apply to appeals from orders under this Code, or under any special or local law in which a different procedure is not provided.

No other appeal from orders; but error therein may be set forth in

591. Except as provided in this chapter, no appeal shall lie from any order passed by any Court in the exercise of its original or appellate jurisdiction; but if any decree be appealed against, any error, defect or irregularity

irregularity in any such order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.

memorandum of appeal against decree.

CHAPTER XLIV.

Of Pauper Appeals.

592. Any person entitled under this Code or any other law to prefer an appeal, who is unable to pay the fee required for the petition of appeal, may, on presenting an application accompanied by a memorandum of appeal, be allowed to appeal as a pauper, subject to the rules contained in chapters XXVI, XLI, XLII and XLIII, in so far as those rules are applicable:

Who may appeal as pauper.

Provided that the Court shall reject the application, unless, upon a perusal thereof and of the judgment and decree against which the appeal is made, it sees reason to think that the decree appealed against is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

Procedure on application for admission of appeal.

593. The inquiry into the pauperism of the applicant may be made either by the Appellate Court or by the Court against whose decision the appeal is made under the orders of the Appellate Court:

Inquiry into pauperism

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court against whose decree the appeal is made, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees special cause to direct such inquiry.

Proviso.

CHAPTER XLV.

Of Appeals to the Queen in Council.

594. In this chapter, unless there be something repugnant in the subject or context, the expression "decree" includes also judgment and order.

"Decree" defined.

595. Subject to such rules as may, from time to time, be made by Her Majesty in Council regarding appeals from the Courts of British India, and to the provisions hereinafter contained,

When appeals lie to Queen in Council.

an

an appeal shall lie to Her Majesty in Council—

(*a*) from any final decree passed on appeal by a High Court or any other Court of final appellate jurisdiction;

(*b*) from any final decree passed by a High Court in the exercise of original civil jurisdiction, and

(*c*) from any decree, when the case, as hereinafter provided, is certified to be a fit one for appeal to Her Majesty in Council.

Value of subject-matter.

596. In each of the cases mentioned in clauses (*a*) and (*b*) of section 595,

the amount or value of the subject-matter of the suit in the Court of first instance must be ten thousand rupees or upwards, and the amount or value of the matter in dispute on appeal to Her Majesty in Council must be the same sum or upwards,

or the decree must involve, directly or indirectly, some claim or question to, or respecting, property of like amount or value,

and where the decree appealed from affirms the decision of the Court immediately below the Court passing such decree, the appeal must involve some substantial question of law.

Bar of certain appeals.

597. Notwithstanding anything contained in section 595,

no appeal shall lie to Her Majesty in Council from the judgment of one Judge of a High Court established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, or of one Judge of a Division Court, or of two or more Judges of such High Court, or of a Division Court constituted by two or more Judges of such High Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the High Court at the time being;

and no appeal shall lie to Her Majesty in Council from any decree which, under section 586, is final.

Application

598. Whoever desires to appeal under this chapter to

to Her Majesty in Council must apply by petition to the Court whose decree is complained of.

to Court whose decree complained of.

599. Such application must ordinarily be made within six months from the date of such decree.

Time within which application must be made.

But if that period expires when the Court is closed, the application may be made on the day that the Court re-opens.

600. Every petition under section 598 must state the grounds of appeal, and pray for a certificate, either that, as regards amount or value and nature, the case fulfils the requirements of section 596, or that it is otherwise a fit one for appeal to Her Majesty in Council.

Certificate as to value or fitness.

Upon receipt of such petition, the Court may direct notice to be served on the opposite party to show cause why the said certificate should not be granted.

601. If such certificate be refused, the petition shall be dismissed:

Effect of refusal of certificate.

Provided that, if the decree complained of be a final decree passed by a Court other than a High Court, the order refusing the certificate shall be appealable, within thirty days from the date of the order, to the High Court to which the former Court is subordinate.

602. If the certificate be granted, the applicant shall, within six months from the date of the decree complained of, or within six weeks from the grant of the certificate, whichever is the later date,

Security and deposit required on grant of certificate.

(*a*) give security for the costs of the respondent, and

(*b*) deposit the amount required to defray the expense of translating, transcribing, indexing and transmitting to Her Majesty in Council a correct copy of the whole record of the suit, except

(1) formal documents directed to be excluded by any order of Her Majesty in Council in force for the time being;

(2) papers which the parties agree to exclude;

(3) accounts,

(3) accounts, or portions of accounts, which the officer empowered by the Court for that purpose considers unnecessary, and which the parties have not specifically asked to be included, and

(4) such other documents as the High Court may direct to be excluded:

and when the applicant prefers to print in India the copy of the record, except as aforesaid, he shall also, within the time mentioned in the first clause of this section, deposit the amount required to defray the expense of printing such copy.

Admission of appeal and procedure thereon.

603. When such security has been completed and deposit made to the satisfaction of the Court, the Court may

(*a*) declare the appeal admitted, and

(*b*) give notice thereof to the respondent, and shall then

(*c*) transmit to Her Majesty in Council, under the seal of the Court, a correct copy of the said record, except as aforesaid, and

(*d*) give to either party one or more authenticated copies of any of the papers in the suit on his applying therefor and paying the reasonable expenses incurred in preparing them.

Revocation of acceptance of security.

604. At any time before the admission of the appeal, the Court may, upon cause shown, revoke the acceptance of any such security, and make further directions thereon.

Power to order further security or payment.

605. If at any time after the admission of the appeal, but before the transmission of the copy of the record, except as aforesaid, to Her Majesty in Council, such security appears inadequate,

or further payment is required for the purpose of translating, transcribing, printing, indexing or transmitting the copy of the record, except as aforesaid,

the Court may order the appellant to furnish, within a time to be fixed by the Court, other and sufficient

sufficient security, or to make, within like time, the required payment.

606. If the appellant fail to comply with such order, the proceedings shall be stayed, Effect of failure to comply with order.

and the appeal shall not proceed without an order in this behalf of Her Majesty in Council,

and in the meantime execution of the decree appealed against shall not be stayed.

607. When the copy of the record, except as aforesaid, has been transmitted to Her Majesty in Council, the appellant may obtain a refund of the balance, if any, of the amount which he has deposited under section 602. Refund of balance of deposit.

608. Notwithstanding the admission of any appeal under this chapter, the decree appealed against shall be unconditionally enforced, unless the Court admitting the appeal otherwise directs. Powers of Court pending appeal.

But the Court may, if it thinks fit, on any special cause shown by any party interested in the suit, or otherwise appearing to the Court,

(*a*) impound any moveable property in dispute or any part thereof, or

(*b*) allow the decree appealed against to be enforced, taking such security from the respondent as the Court thinks fit for the due performance of any order which Her Majesty in Council may make on the appeal, or

(*c*) stay the execution of the decree appealed against, taking such security from the appellant as the Court thinks fit for the due performance of the decree appealed against, or of any order which Her Majesty in Council may make on the appeal, or

(*d*) place any party seeking the assistance of the Court under such conditions, or give such other direction respecting the subject-matter of the appeal, as it thinks fit.

609. If, at any time during the pendency of the appeal, the security so furnished by either party appears Increase of security found inadequate.

pears inadequate, the Court may, on the application of the other party, require further security.

In default of such further security being furnished as required by the Court, if the original security was furnished by the appellant, the Court may, on the application of the respondent, issue execution of the decree appealed against as if the appellant had furnished no such security.

And if the original security was furnished by the respondent, the Court shall, so far as may be practicable, stay all further execution of the decree, and restore the parties to the position in which they respectively were when the security which appears inadequate was furnished, or give such direction respecting the subject-matter of the appeal as it thinks fit.

Procedure to enforce orders of Queen in Council.

610. Whoever desires to enforce or to obtain execution of any order of Her Majesty in Council shall apply by petition, accompanied by a certified copy of the decree or order made in appeal and sought to be enforced or executed, to the Court from which the appeal to Her Majesty was preferred.

Such Court shall transmit the order of Her Majesty to the Court which made the first decree appealed from, or to such other Court as Her Majesty by her said order may direct, and shall (upon the application of either party) give such directions as may be required for the enforcement or execution of the same; and the Court to which the said order is so transmitted shall enforce or execute it accordingly, in the manner and according to the rules applicable to the execution of its original decrees.

When any moneys expressed to be payable in British currency are payable in India under such order, the amount so payable shall be estimated according to the rate of exchange for the time being fixed by the Secretary of State for India in Council, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, for the adjustment of financial

cial transactions between the Imperial and the Indian Governments.

611. The orders made by the Court which enforces or executes the order of Her Majesty in Council, relating to such enforcement or execution, shall be appealable in the same manner and subject to the same rules as the orders of such Court relating to the enforcement or execution of its own decrees.

Appeal against order relating to execution.

612. The High Court may, from time to time, make rules consistent with this Act to regulate—

Power to make rules.

(*a*) the service of notices under section 600 ;

(*b*) the grant or refusal of certificates, under sections 601 and 602, by Courts of final appellate jurisdiction subordinate to the High Court ;

(*c*) the amount and nature of the security required under sections 602, 605 and 609 ;

(*d*) the testing of such security ;

(*e*) the estimate of the cost of transcribing the record ;

(*f*) the preparation, examination and certifying of such transcript ;

(*g*) the revision and authentication of translations ;

(*h*) the preparation of indices to transcripts of records, and of lists of the papers not included therein ;

(*i*) the recovery of costs incurred in British India in connection with appeals to Her Majesty in Council,

and all other matters connected with the enforcement of this chapter.

All such rules shall be published in the local official Gazette, and shall thereupon have the force of law in the High Court and the Courts of final appellate jurisdiction subordinate thereto.

Publication of rules.

613. All rules heretofore made and published by any High Court relating to appeal to Her Majesty in Council and in force immediately before the passing of this Act, shall, so far as they are consistent with this

Legalization of existing rules.

this Act, be deemed to have been made and published hereunder.

Recorder of Rangoon.

614. In sections 595 and 612, the expression "High Court" shall be deemed to include also the Recorder of Rangoon, but not so as to empower him to make rules binding on Courts other than his own Court.

Construction of Bengal Regulation III of 1828, section 4, clause 5.

615. The rules and restrictions referred to in Bengal Regulation III of 1828, section IV, clause *fifth*, shall be deemed to be the rules and restrictions applicable to appeals under this Code from the decisions of the High Court of Judicature at Fort William in Bengal.

Saving of Her Majesty's pleasure,

616. Nothing herein contained shall be understood—

(*a*) to bar the full and unqualified exercise of Her Majesty's pleasure in receiving or rejecting appeals to Her Majesty in Council, or otherwise howsoever, or

and of rules for conduct of business before Judicial Committee.

(*b*) to interfere with any rules made by the Judicial Committee of the Privy Council, and for the time being in force, for the presentation of appeals to Her Majesty in Council, or their conduct before the said Judicial Committee.

And nothing in this chapter applies to any matter of criminal or admiralty or vice-admiralty jurisdiction, or to appeals from orders and decrees of Prize Courts.

PART VII.

CHAPTER XLVI.

OF REFERENCE TO AND REVISION BY THE HIGH COURT.

Reference of question to High Court.

617. If before or on the hearing of a suit or an appeal in which the decree is final, or if in the execution of any such decree, any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits, arises, on which the Court trying the suit or appeal

appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court.

Court may pass decree contingent upon opinion of High Court.

618. The Court may either stay the proceedings or proceed in the case notwithstanding such reference, and may pass a decree or order contingent upon the opinion of the High Court on the point referred ;

but no execution shall be issued, property sold, or person imprisoned in any case in which such reference is made until the receipt of a copy of the judgment of the High Court upon such reference.

Judgment of High Court to be transmitted, and case disposed of accordingly.

619. The High Court shall hear the parties to the case in which the reference is made, in person or by their respective pleaders, and shall decide the point so referred, and shall transmit a copy of its judgment, under the signature of the Registrar, to the Court by which the reference was made ; and such Court shall, on the receipt thereof, proceed to dispose of the case in conformity with the decision of the High Court.

Costs of reference to High Court.

620. Costs, if any, consequent on a reference for the opinion of the High Court, shall be costs in the case.

Power to alter, &c., decrees of Court making reference.

621. When a case is referred to the High Court under this chapter, the High Court may return the case for amendment, and may alter, cancel or set aside any decree or order which the Court making the reference has passed in the case out of which the reference arose, and make such order as it thinks fit.

Power to call for record of cases not appealable to High Court.

622. The High Court may call for the record of any case in which no appeal lies to the High Court, if the Court by which the case was decided appears to have exercised a jurisdiction not vested in it by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of its jurisdiction illegally or with material irregularity ; and may pass such order in the case as the High Court thinks fit.

PART VIII.

PART VIII.

CHAPTER XLVII.

OF REVIEW OF JUDGMENT.

Application for review of judgment.

623. Any person considering himself aggrieved—

(*a*) by a decree or order from which an appeal is hereby allowed, but from which no appeal has been preferred;

(*b*) by a decree or order from which no appeal is hereby allowed; or

(*c*) by a judgment on a reference from a Court of Small Causes,

and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him,

may apply for a review of judgment to the Court which passed the decree or made the order, or to the Court, if any, to which the business of the former Court has been transferred.

A party who is not appealing from a decree may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except when the ground of such appeal is common to the applicant and the appellant, or when, being a respondent, he can present to the Appellate Court the case on which he applies for the review.

To whom applications for review may be made.

624. Except upon the ground of the discovery of such new and important matter or evidence as aforesaid, or of some clerical error apparent on the face of the decree, no application for a review of judgment, other than that of a High Court, shall be made to any Judge other than the Judge who delivered it.

625. The

625. The rules hereinbefore contained as to the form of making appeals shall apply, *mutatis mutandis*, to applications for review. Form of applications for review.

626. If it appears to the Court that there is not sufficient ground for a review, it shall reject the application. Application when rejected.

If the Court be of opinion that the application for the review should be granted, it shall grant the same, and the Judge shall record with his own hand his reasons for such opinion: Application when granted.

Provided that— Proviso.

(*a*) no such application shall be granted without previous notice to the opposite party, to enable him to appear and be heard in support of the decree a review of which is applied for; and

(*b*) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him, when the decree or order was passed, without strict proof of such allegation.

627. If the Judge or Judges, or any one of the Judges, who passed the decree or order, a review of which is applied for, continues or continue attached to the Court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause, for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same. Application for review in Court consisting of two or more Judges.

628. If the application for a review be heard by more than one Judge and the Court be equally divided, the application shall be rejected. Application when rejected.

If there be a majority the decision shall be according to the opinion of the majority.

629. An order of the Court for rejecting the application shall be final; but whenever such application Order of rejection final.

Objections to admission.

tion is admitted, the admission may be objected to on the ground that it was

(*a*) in contravention of the provisions of section 624,

(*b*) in contravention of the provisions of section 626, or

(*c*) after the expiration of the period of limitation prescribed therefor and without sufficient cause.

Such objection may be made at once by an appeal against the order granting the application, or may be taken in any appeal against the final decree or order made in the suit.

Where the application has been rejected in consequence of the failure of the applicant to appear, he may apply for an order to have the rejected application restored to the file, and, if it be proved to the satisfaction of the Court that he was prevented by any sufficient cause from appearing when such application was called on for hearing, the Court may order it to be restored to the file upon such terms as to costs or otherwise as it thinks fit, and shall appoint a day for hearing the same.

No order shall be made under this section unless the applicant has served the opposite party with notice in writing of the latter application.

No application to review an order passed on review or on an application for a review shall be entertained.

Registry of application granted, and order for re-hearing.

630. When an application for a review is granted, a note thereof shall be made in the register, and the Court may at once re-hear the case or make such order in regard to the re-hearing as it thinks fit.

PART IX.

CHAPTER XLVIII.

SPECIAL RULES RELATING TO THE CHARTERED HIGH COURTS.

Chapter to

631. This chapter applies only to High Courts which

which are or may hereafter be established under the twenty-fourth and twenty-fifth of Victoria, chapter 104 (*An Act for establishing High Courts of Judicature in India*).

apply only to certain High Courts.

632. Except as provided in this chapter, the provisions of this Code apply to such High Courts.

Application of Code to High Courts.

633. The High Court shall take evidence, and record judgments and orders in such manner as it by rule from time to time directs.

High Court to record judgments according to its own rules.

634. Whenever a High Court considers it necessary that a decree made in the exercise of its ordinary original civil jurisdiction should be enforced before the amount of the costs incurred in the suit can be ascertained by taxation, the Court may order that the decree shall be executed forthwith, except as to so much thereof as relates to the costs;

Power to order execution of decree before ascertainment of costs, and

and, as to so much thereof as relates to the costs, that the decree may be executed as soon as the amount of the costs shall be ascertained by taxation.

execution for costs subsequently.

635. Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its ordinary original civil jurisdiction, or to examine witnesses, except when the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakíls and attorneys.

Unauthorized persons not to address Court.

636. Notices to produce documents, summonses to witnesses, and every other judicial process, issued in the exercise of the ordinary or extraordinary original civil jurisdiction of the High Court, and of its matrimonial, testamentary and intestate jurisdictions, except summonses to defendants issued under section 64, writs of execution, and notices under section 553, may be served by the attorneys in the suit, or by persons employed by them, or by such other persons as the High Court by any rule or order, from time to time, directs.

Who may serve process of High Court.

637. Any non-judicial or quasi-judicial act which this Code requires to be done by a Judge, and any act which

Non-judicial acts may be done by Registrar.

which may be done by a Commissioner appointed to examine and adjust accounts under section 394, may be done by the Registrar of the Court or by such other officer of the Court as the Court may direct to do such act.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Sections not applying to High Court in original civil jurisdiction.

638. The following portions of this Code shall not apply to the High Court in the exercise of its ordinary or extraordinary original civil jurisdiction, namely, sections 16, 17 and 19, sections 54, clauses (*a*) and (*b*), 57, 119, 160, 182 to 185 (both inclusive), 187, 189, 190, 191, 192 (so far as relates to the manner of taking evidence), 198 to 206 (both inclusive), and so much of section 409 as relates to the making of a memorandum;

and section 579 shall not apply to the High Court in the exercise of its appellate jurisdiction.

Code not to affect High Court in exercise of insolvent jurisdiction.

Nothing in this Code shall extend or apply to any Judge of a High Court in the exercise of jurisdiction as an Insolvent Court.

Power to frame forms.

639. The High Court may, from time to time, frame forms for any proceeding in such Court, and may make rules as to the books, entries and accounts to be kept by its officers.

PART X.

CHAPTER XLIX.

MISCELLANEOUS.

Exemption of certain women from personal appearance.

640. Women, who according to the customs and manners of the country ought not to be compelled to appear in public, shall be exempt from personal appearance in Court.

But nothing herein contained shall be deemed to exempt such women from arrest in execution of civil process.

641. The

641. The Local Government may, by notification in the official Gazette, exempt from personal appearance in Court any person whose rank, in the opinion of such Government, entitles him to the privilege of exemption, and may, by like notification, withdraw such privilege.

Local Government may exempt certain persons from personal appearance.

The names and residences of the persons so exempted shall, from time to time, be forwarded to the High Court by the Local Government, and a list of such persons shall be kept in such Court, and a list of such persons as reside within the local limits of the jurisdiction of each Court subordinate to the High Court shall be kept in such subordinate Court.

Lists of names of persons exempted to be kept in Courts.

When any person so exempted claims the privilege of such exemption, and it is consequently necessary to examine him by commission, he shall pay the costs of that commission, unless the party requiring his evidence pays such costs.

Costs of commission rendered necessary by claiming privilege.

642. No Judge, Magistrate or other judicial officer shall be liable to arrest under civil process while going to, presiding in, or returning from, his Court.

Persons exempt from arrest under civil process.

And, except as provided in sections 256 and 643, where any matter is pending before a tribunal having jurisdiction therein, or believing in good faith that it has such jurisdiction, the parties thereto, their pleaders, mukhtárs, revenue-agents and recognized agents, and their witnesses acting in obedience to a summons, shall be exempt from arrest under civil process while going to or attending such tribunal for the purpose of such matter, and while returning from such tribunal.

643. When in a case pending before any Court, there appears to the Court sufficient ground for sending for investigation to the Magistrate a charge of any such offence as is described in section 193, section 196, section 199, section 200, section 205, section 206, section 207, section 208, section 209, section 210, section 463, section 471, section 474, section 475, section 476 or section 477 of the Indian Penal Code, which may be made in the course of any other suit or proceeding, or

Procedure in case of certain offences.

with

with respect to any document offered in evidence in the case, the Court may cause the person accused to be detained till the rising of the Court, and may then send him in custody to the Magistrate, or take sufficient bail for his appearance before the Magistrate.

The Court shall send to the Magistrate the evidence and documents relevant to the charge, and may bind over any person to appear and give evidence before such Magistrate.

The Magistrate shall receive such charge and proceed with it according to law.

Use of forms in fourth schedule.

644. Subject to the power conferred on the High Court by section 639 and by the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, the forms set forth in the fourth schedule hereto annexed, with such variation as the circumstances of each case require, shall be used for the respective purposes therein mentioned.

Language of subordinate Courts.

645. The language which, when this Code comes into force, is the language of any Court subordinate to a High Court, shall continue to be the language of such subordinate Court until the Local Government otherwise orders;

but it shall be lawful for the Local Government, from time to time, to declare what language shall be the language of every such Court.

Assessors in causes of salvage, &c.

645A. In any Admiralty or Vice-Admiralty cause of salvage, towage or collision, the Court, whether it be exercising its original or its appellate jurisdiction, may if it thinks fit, and upon request of either party to such cause shall, summon to its assistance, in such manner as the Court may by rule, from time to time, direct, two competent assessors; and such assessors shall attend and assist accordingly.

Every such assessor shall receive such fees for his attendance as the Court by rule prescribes. Such fees shall be paid by such of the parties as the Court in each case may direct.

Power of Registrars of Small

646. Whenever the Registrar of a Court of Small Causes has any doubt upon any question of law or usage

usage having the force of law, or as to the construction of a document, which construction may affect the merits of the decision, he may state a case for the opinion of the Judge; and all the provisions herein contained relative to the stating of a case by the Judge shall apply, *mutatis mutandis*, to the stating of a case by the Registrar.

Cause Courts to state cases.

647. The procedure herein prescribed shall be followed, as far as it can be made applicable, in all proceedings in any Court of civil jurisdiction other than suits and appeals.

Miscellaneous proceedings.

The High Court may, from time to time, make rules to provide for the admission, in such proceedings, of affidavits as evidence of the matters to which such affidavits respectively relate; and such rules, on being published in the local official Gazette, shall have the force of law.

Admission of affidavits as evidence.

648. Where any Court desires that any person shall be arrested or that any property shall be attached under any provision of this Code not relating to the execution of decrees, and such person resides or property is situate outside the local limits of its jurisdiction, the Court may, in its discretion, issue a warrant of arrest or make an order of attachment, and send to the District Court within the local limits of whose jurisdiction such person or property resides or is situate a copy of the warrant or order, together with the probable amount of the costs of the arrest or attachment.

Procedure when person to be arrested or property to be attached is outside district.

The District Court shall, on receipt of such copy and amount, cause the arrest or attachment to be made by its own officers, or by a Court subordinate to itself, and shall inform the Court which issued or made such warrant or order of the arrest or attachment;

and the Court making any arrest under this section shall send the person arrested to the Court by which the warrant of arrest was issued, unless he furnishes sufficient security for his appearance before that Court, or (where the case is one under chapter XXXIV)

XXXIV) for satisfying any decree that may be passed against him by such Court, in either of which cases the Court making the arrest shall release him.

Rules applicable to all civil process for arrest, sale or payment.

649. The rules contained in chapter XIX shall apply to the execution of any judicial process for the arrest of a person or the sale of property or payment of money, which may be desired or ordered by a Civil Court in any civil proceeding.

In the same chapter, the expression "Court which passed a decree", or words to that effect, shall, unless there is something repugnant in the context, be deemed to include, where the decree to be executed is passed in appeal, the Court which passed the decree against which the appeal was preferred, and, where the Court which passed the decree to be executed has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed were instituted at the time of making application for execution of the decree, would have jurisdiction to try such suit.

Application of rules as to witnesses.

650. The provisions of chapters XIV and XV relating to witnesses shall apply to all persons required to give evidence or to produce documents in any proceeding under this Code.

Service of foreign summonses.

650A. Summonses issued by any Civil or Revenue Court situate beyond the limits of British India may be sent to the Courts in British India and served as if they had been issued by such Courts: provided that the Courts issuing such summonses have been established by the authority of the Governor General in Council, or that the Governor General in Council has, by notification in the *Gazette of India*, declared the provisions of this section to apply to such Courts.

The Governor General in Council may, by like notification, cancel any notification made under this section, but not so as to invalidate the service of any summons served previous to such cancellation.

Penalty for resisting apprehension or escaping

651. Whoever offers any resistance or illegal obstruction to the lawful apprehension of himself under this Code, or under the warrant of any Civil or Revenue

venue Court, or escapes or attempts to escape from any custody in which he is lawfully detained under this Code or under such warrant, shall, on conviction before a Magistrate, be punished with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

from custody under Code or civil process.

652. The High Court may, from time to time, make rules consistent with this Code to regulate any matter connected with its own procedure or the procedure of the Courts of Civil Judicature subject to its superintendence. All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

Power to make subsidiary rules of procedure.

THE FIRST SCHEDULE.

THE FIRST SCHEDULE.

(*See section 3.*)

ACTS REPEALED.

Number and year.	Subject or title.	Extent of repeal.
X of 1877	The Code of Civil Procedure ...	So much as has not been repealed.
XII of 1879	Amending Act X of 1877, &c. ...	Sections one to one hundred and three (both inclusive).
VII of 1880	Merchant Shipping	Section eighty-five.

THE SECOND SCHEDULE.

(*See section 5.*)

Chapters and sections of this Code extending to Provincial Courts of Small Causes.

PRELIMINARY: Sections 1, 2, 3 and 5.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of Suing, except section 20, paragraph 4, and sections 22 to 24 (both inclusive).

CHAPTER III.—Of Parties and their Appearances, Applications and Acts.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits.

CHAPTER VI.—Of the Issue and Service of Summons, except section 77.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Section 111, Set-off.

CHAPTER IX.—Of the examination of the Parties by the Court, except section 119.

CHAPTER X.—Of Discovery and the Admission, &c., of Documents.

CHAPTER XII.—Section 155, first paragraph, Judgment where either party fails to produce his evidence.

CHAPTER XIII.—Of Adjournments.

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses.

CHAPTER XV.—Of the Hearing of the suit and Examination of Witnesses, except sections 182 to 188 (both inclusive).

CHAPTER XVII.

THE SECOND SCHEDULE—*concluded.*

Chapters and sections of this Code extending to Provincial Courts of Small Causes—concluded.

CHAPTER XVII.—Of Judgment and Decree, except sections 204, 207, 211, 212, 213, 214 and 215.

CHAPTER XVIII.—Sections 220, 221 and 222, of Costs.

CHAPTER XIX.—Of the Execution of Decrees, sections 223 to 236 (both inclusive), 239 to 258 (both inclusive), 259 (except so far as relates to the recovery of wives), 266 (except so far as relates to immoveable property), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 280 (both inclusive), 283, 284 (so far as relates to moveable property), 285, 286, 287, 288, 289, 290, 291, 292, 293 (so far as relates to re-sales under 297), 294 to 303 (both inclusive), 328 to 333 (both inclusive, so far as relates to moveable property), 336 to 343 (both inclusive).

CHAPTER XX.—Section 360, Power to invest certain Courts with Insolvency-jurisdiction.

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of payment into Court.

CHAPTER XXIV.—Of requiring Security for Costs.

CHAPTER XXV.—Of Commissions.

CHAPTER XXVI.—Suits by Paupers.

CHAPTER XXVII.—Suits by and against Government or Government Servants.

CHAPTER XXVIII.—Suits by Aliens and by and against Foreign and Native Rulers, except the first paragraph of section 433.

CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of unsound Mind.

CHAPTER XXXII.—Suits by and against Military Men.

CHAPTER XXXIII.—Interpleader.

CHAPTER XXXIV.—Of Arrest and Attachment before Judgment, except as regards immoveable property.

CHAPTER XXXVI.—Appointment of Receivers.

CHAPTER XXXVII.—Reference to Arbitration, sections 506 to 526 (both inclusive).

CHAPTER XXXVIII.—Of Proceedings on Agreement of Parties.

CHAPTER XLVI.—Reference to and Revision by High Court.

CHAPTER XLVII.—Of Review of Judgment.

CHAPTER XLIX.—Miscellaneous, sections 640 to 647 (both inclusive), sections 649 to 652 (both inclusive).

THE THIRD SCHEDULE.

(*See section 7.*)

Bombay Enactments.

Bombay Regulation XXIX, 1827.
" " VII, 1830.
" " I, 1831.
" " XVI, 1831.
Act XIX of 1835.
" XIII of 1842.

THE FOURTH SCHEDULE.

THE FOURTH SCHEDULE.

(*See section 644.*)

FORMS OF PLEADINGS AND DECREES.

A.—PLAINTS. PART I.

No. 1.

FOR MONEY LENT.

IN THE COURT OF , AT

Civil Suit No. .

A. B. of

against

C. D. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , he lent the defendant rupees repayable on demand [*or* on the day of].

2. That the defendant has not paid the same, except rupees paid on the day of 18 .

[*If the plaintiff claims exemption from any law of limitation, say:*—

3. The plaintiff was a minor [*or* insane] from the day of till the day of].

4. The plaintiff prays judgment for rupees, with interest at per cent. from the day of 18 .

[NOTE.—The object of stating when the debt is to be repaid is merely to fix a date for interest. If, therefore interest is not claimed, the statement may be omitted.]

No. 2.

FOR MONEY RECEIVED TO PLAINTIFF'S USE.

(*Title.*)

A. B and *G. H.*, the above-named plaintiffs, state as follows:—

1. That on the day of 18 , at , the defendant received rupees [*or* a cheque on the Bank for rupees] from one *E. F.* for the use of the plaintiffs.

2. That the defendant has not paid [*or* delivered] the same accordingly.

3. The plaintiffs pray judgment for rupees, with interest at per cent. from the day of 18 .

No. 3.

THE FOURTH SCHEDULE—*continued.*

No. 3.

FOR PRICE OF GOODS SOLD BY A FACTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , he and *E. F.*, since deceased, delivered to the defendant [*one thousand barrels of flour, five hundred maunds of rice, or as the case may be*] for sale upon commission.

2. That on the day of 18 , [*or*, on some day unknown to the plaintiff, before the day of 18], the defendant sold the said merchandise for rupees.

3. That the commission and expenses of the defendant thereon amount to rupees.

4. That on the day of 18 , the plaintiff demanded from the defendant the proceeds of the said merchandise.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 4.

FOR MONEY RECEIVED BY DEFENDANT THROUGH THE PLAINTIFF'S MISTAKE OF FACT.

(*Title.*)

A.B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff agreed to buy and the defendant agreed to sell bars of silver at annas per tola of fine silver.

2. That the plaintiff procured the said bars, to be assayed by one *E. F.*, who was paid by the defendant for such assay, and that the said *E. F.* declared each of the said bars to contain 1,500 tolas of fine silver, and that the plaintiff accordingly paid the defendant Rs. annas therefor.

3. That each of the said bars did contain only 1,200 tolas of fine silver.

4. That the defendant has not repaid the sum so overpaid.

[*Demand of judgment.*]

[NOTE.—A demand of repayment is not necessary, but it may affect the question of interest or the costs.]

No. 5.

FOR MONEY PAID TO A THIRD PARTY AT THE DEFENDANT'S REQUEST.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at at the request [*or* by the authority] of the defendant, the plaintiff paid to one *E. F.* rupees.

2. That, in consideration thereof, the defendant promised [*or* became bound] to pay the same to the plaintiff on demand [*or as the case may be*].

3. That [on the day of 18 , the plaintiff demanded payment of the same from the defendant, but] he has not paid the same.

[*Demand of judgment.*]

[NOTE.—If the request or authority is implied, the plaint should state facts raising the implication.]

No. 6.

THE FOURTH SCHEDULE—*continued.*

No. 6.

For Goods sold at a fixed Price and delivered.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , *E. F.*, of , deceased, sold and delivered to the defendant [one hundred barrels of flour, *or*, the goods mentioned in the schedule hereto annexed, *or*, sundry goods].

2. That the defendant promised to pay rupees for the said goods on delivery [*or*, on the day of *some day before the plaint was filed*].

3. That he has not paid the same.

4. That the said *E. F.*, in his lifetime made his will, whereby he appointed the plaintiff executor thereof.

5. That on the day of 18 the said *E. F.* died.

6 That on the day of probate of the said will was granted to the plaintiff by the Court of .

7. The plaintiff as executor as aforesaid [*Demand of judgment*].

[Note.—If a day was fixed for payment it should be stated as furnishing a date for the commencement of interest.]

No. 7.

Goods sold at a reasonable Price and delivered.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at plaintiff sold and delivered to the defendant [sundry articles of house-furniture] but no express agreement was made as to the price.

2. That the same were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[Note.—The law implies a promise to pay so much as the goods are reasonably worth.]

No. 8.

For Goods delivered to a third Party at Defendant's Request at a fixed Price.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at plaintiff sold to the defendant [one hundred barrels of flour] and, at the request of the defendant, delivered the same to one *E. F.*

2. That the defendant promised to pay to the plaintiff rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 9.

THE FOURTH SCHEDULE—*continued.*

BENGAL SECRETARIAT LIBRARY.

No. 9.

FOR NECESSARIES FURNISHED TO THE FAMILY OF DEFENDANT'S TESTATOR WITHOUT HIS EXPRESS REQUEST, AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at plaintiff furnished to [*Mary Jones*] the wife of [*James Jones*] deceased, at her request, sundry articles of [*food and clothing*], but no express agreement was made as to the price.

2. That the same were necessary for her.

3. That the same were reasonably worth rupees.

4. That the said *James Jones* refused to pay the same.

5. That the defendant is the executor of the last will of the said *James Jones*.

[*Demand of judgment.*]

No. 10.

FOR GOODS SOLD AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff sold to *E. F.*, of , deceased, [*all the crops then growing on his farm in*].

2. That the said *E. F.* promised to pay the plaintiff rupees for the same.

3. That he did not pay the same.

4. That the defendant is administrator of the estate of the said *E. F.*

[*Demand of judgment.*]

No. 11.

FOR GOODS SOLD AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , sold to the defendant [*all the fruit growing in his orchard in*], but no express agreement was made as to the price.

2. That the same was reasonably worth rupees.

3. That the defendant has not paid the same.

4. That on the day of the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic and appointed the plaintiff committee of his estate, with the usual powers for the management thereof.

5. The plaintiff as committee as aforesaid [*Demand of judgment*].

[NOTE.—When the lunatic's estate is not subject to the ordinary original jurisdiction of a High Court, for paragraphs 4 and 5 substitute the following :—]

4. That on the day of the Civil Court of duly adjudged the said *E. F.* to be of unsound mind and incapable of managing his affairs, and appointed the plaintiff Manager of his estate.

5. The plaintiff as Manager as aforesaid [*Demand of judgment.*]

No. 12.

THE FOURTH SCHEDULE—*continued.*

No. 12.

FOR GOODS MADE AT DEFENDANT'S REQUEST, AND NOT ACCEPTED.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , *E. F.*, of , agreed with the plaintiff that the plaintiff should make for him [*six tables and fifty chairs*], and that the said *E. F.* should pay for the same upon delivery thereof rupees.

2. That the plaintiff made the said goods, and on the day of 18 , offered to deliver the same to the said *E. F.*, and has ever since been ready and willing so to do.

3. That the said *E. F.* has not accepted the said goods or paid for the same.

4. That on the day of 18 , the High Court of Judicature at Fort William duly adjudged the said *E. F.* to be a lunatic, and appointed the defendant committee of his estate.

5. The plaintiff prays judgment for rupees with interest from the day of , at the rate of per cent. per annum, to be paid out of the estate of the said *E. F.* in the hands of the defendant.

No. 13.

FOR DEFICIENCY UPON A RE-SALE [GOODS SOLD AT AUCTION].

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff put up at auction sundry [*articles of merchandise*], subject to the condition that all goods not paid for and removed by the purchaser thereof within [*ten days*] after the sale, should be re-sold by auction on his account, of which condition the defendant had notice.

2. That the defendant purchased [*one crate of crockery*] at the said auction at the price of rupees.

3. That the plaintiff was ready and willing to deliver the same to the defendant on the said day and for [*ten days*] thereafter, of which the defendant had notice.

4. That the defendant did not take away the said goods purchased by him, nor pay therefor, within [*ten days*] after the sale, nor afterwards.

5. That on the day of 18 , at , the plaintiff re-sold the said [*crate of crockery*], on account of the defendant, by public auction, for rupees.

6. That the expenses attendant upon such re-sale amounted to rupees.

7. That the defendant has not paid the deficiency thus arising, amounting to rupees.

[*Demand of judgment.*]

[NOTE to § 4.—Unless the seller agreed to deliver, the purchaser must fetch the goods; see Act IX of 1872, section 93.]

No. 14.

THE FOURTH SCHEDULE—*continued.*

No. 14.

For the Purchase-money of Lands conveyed.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the plaintiff sold [and conveyed] to the defendant [the house and compound No. , in the city of *or*, a farm known as , in *or*, a piece of land lying, *&c.*]

2. That the defendant promised to pay the plaintiff rupees for the said [house and compound, *or* farm, *or* land].

3. That he has not paid the same.

[*Demand of judgment.*]

[Note.—Where there has been no actual conveyance, say, in § 1. "sold to the defendant the house, &c., and placed him in possession of the same."]

No. 15.

For the Purchase-money of Immoveable Property contracted to be sold, but not conveyed.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant, and that the defendant should purchase from the plaintiff [the house No. , in the town of , *or* one hundred bighás of land in , bounded by the East Indian railroad, and by other lands of the plaintiff] for rupees.

2. That on the day of 18 , at , the plaintiff tendered [*or*, was ready and willing, and offered to execute] a sufficient instrument of conveyance of the said property to the defendant, on payment of the said sum, and still is ready and willing to execute the same.

3. That the defendant has not paid the said sum.

[*Demand of judgment.*]

No. 16.

For Services at a fixed Price.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant [hired plaintiff as a clerk, at the salary of rupees per year].

2. That from the [said day] until the day of 18 , the plaintiff served the defendant as his [clerk].

3. That the defendant has not paid the said salary.

[*Demand of judgment.*]

No. 17.

THE FOURTH SCHEDULE—*continued.*

No. 17.

FOR SERVICES AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That between the day of 18 , and the day of 18 , at , plaintiff [executed sundry drawings, designs and diagrams] for the defendant, at his request; but no express agreement was made as to the sum to be paid for such services.

2. That the said services were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 18.

FOR SERVICES AND MATERIALS AT A FIXED PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff [furnished the paper for and printed one thousand copies of a book called] for the defendant, at his request [and delivered the same to him].

2. That the defendant promised to pay rupees therefor.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 19.

FOR SERVICES AND MATERIALS AT A REASONABLE PRICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff built a house [known as No. , in], and furnished the materials therefor, for the defendant, at his request, but no express agreement was made as to the price to be paid for such work and materials.

2. That the said work and materials were reasonably worth rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 20.

THE FOURTH SCHEDULE—*continued.*

No. 20.

FOR RENT RESERVED IN A LEASE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant entered into a contract with the plaintiff, under their hands, a copy of which is hereto annexed.

[*Or state the substance of the contract.*]

2. That the defendant has not paid the rent of the [month] ending on the day of 18 , amounting to rupees.

[*Demand of judgment.*]

Another Form.

1. That the plaintiff let to the defendant a house, No. 27, Chowringhee, for seven years to hold from the day of 18 , at rupees a year, payable quarterly.

2. That of such rent quarters are due and unpaid.

[*Demand of judgment.*]

No. 21.

FOR USE AND OCCUPATION AT A FIXED RENT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant hired from the plaintiff [the house No. , street], at the rent of rupees, payable on the first day of

2. That the defendant occupied the said premises from the day of 18 to the day of 18 .

3. That the defendant has not paid rupees, being the part of said rent due on the first day of 18 .

[*Demand of judgment.*]

No. 22.

FOR USE AND OCCUPATION AT A REASONABLE RENT.

(*Title.*)

A. B., the above-named plaintiff, executor of the will of *X. Y.*, deceased, states as follows:—

1. That the defendant occupied the [house No. , street], by permission of the said *X. Y.*, from the day of 18 , until the day of 18 , and no agreement was made as to payment for the use of the said premises.

2. That the use of the said premises for the said period was reasonably worth rupees.

3. That the defendant has not paid the same.

4. The plaintiff as such executor as aforesaid prays judgment for rupees.

No. 23.

THE FOURTH SCHEDULE—*continued.*

No. 23.

FOR BOARD AND LODGING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That from the day of 18 , until the day of 18 , the defendant occupied certain rooms in the house [No. street], by permission of the plaintiff, and was furnished by the plaintiff, at his request, with meat, drink, attendance and other necessaries.

2. That, in consideration thereof, the defendant promised to pay [*or* that no agreement was made as to payment for such meat, drink, attendance or necessaries, but the same were reasonably worth] the sum of rupees.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 24.

FOR FREIGHT OF GOODS.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , plaintiff transported in [his barge, *or otherwise*] [one thousand barrels of flour, *or* sundry goods], from to , at the request of the defendant.

2. That the defendant promised to pay the plaintiff the sum of [one rupee per barrel] as freight thereon [*or*, that no agreement was made as to payment for such transportation, but such transportation was reasonably worth rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 25.

FOR PASSAGE-MONEY.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , plaintiff conveyed the defendant [in his ship, called the], from to at his request.

2. That the defendant promised to pay the plaintiff rupees therefor. [*Or* that no agreement was made as to the price of the said passage, but the said passage was reasonably worth rupees.]

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 26.

THE FOURTH SCHEDULE—*continued.*

No 26.

On an Award.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant, having a controversy between them concerning [a demand of the plaintiff for the price of ten barrels of oil, which the defendant refused to pay], agreed to submit the same to the award of *E. F.* and *G. H.*, as arbitrators [*or*, entered into an agreement, a copy of which is hereto annexed].

2. That on the day of 18 , at the said arbitrators awarded that the defendant should [pay the plaintiff rupees].

3. That the defendant has not paid the same.

[*Demand of judgment.*]

[Note.—This will apply where the agreement to refer is not filed in court.]

No. 27.

On a Foreign Judgment.

(*Title*).

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , in the State [*or* Kingdom] of , the Court of that State [*or* Kingdom], in a suit therein pending between the plaintiff and the defendant, duly adjudged that the defendant should pay to the plaintiff rupees, with interest from the said date.

2. That the defendant has not paid the same.

[*Demand of judgment.*]

Plaints upon Instruments for the Payment of Money only.

No. 28.

On an Annuity Bond.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant by his bond became bound to the plaintiff in the sum of rupees to be paid by the defendant to the plaintiff, subject to a condition that if the defendant should pay to the plaintiff rupees half-yearly on the day of and the day of in every year during the life of the plaintiff, the said bond should be void.

2. That afterwards, on the day of 18 , the sum of rupees for of the said half-yearly payments of the said annuity, became due to the plaintiff and is still unpaid.

[*Demand of judgment.*]

No. 29.

THE FOURTH SCHEDULE—*continued.*

No. 29.

PAYEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the defendant, by his promissory note, now overdue, promised to pay to the plaintiff rupees [days] after date.

2. That he has not paid the same [except rupees, paid on the day of 18].

[*Demand of judgment.*]

[NOTE.—*Where the note is payable after notice, for paragraphs 1 and 2 substitute*—]

1. That on the day of 18 , at , the defendant by his promissory note promised to pay to the plaintiff rupees months after notice.

2. That notice was afterwards given by the plaintiff to the defendant to pay the same months after the said notice.

3. That the said time for payment has elapsed, but the defendant has not paid the same.

[*Where the note is payable at a particular place, say*—]

1. That on the day of 18 , at , the defendant, by his promissory note, now overdue, promised to pay to the plaintiff [at Messrs. *A. & Co.'s*, Madras] rupees months after date.

2. That the said note was duly presented for payment [at Messrs. *A. & Co.'s*] aforesaid, but has not been paid.

Written Statement of the Defendant.

IN THE COURT, &c.

C. D., the above-named defendant, states as follows:—

1. The defendant made the note sued upon under the following circumstances: The plaintiff and defendant had for some years been in partnership as indigo-manufacturers, and it had been agreed between them that they should dissolve partnership, that the plaintiff should retire from the business, and that the defendant should take over the whole of the partnership-assets and liabilities and should pay the plaintiff the value of his share in the assets after deducting the liabilities.

2. The plaintiff thereupon undertook to examine the partnership-books and inquire into the state of the partnership-assets and liabilities; and he did accordingly examine the said books and make the said inquiries, and he thereupon represented to the defendant that the assets of the firm exceeded Rs. 1,00,000 and that the liabilities of the firm were less than Rs. 30,000, whereas the fact was that the assets of the firm were less than Rs. 50,000 and the liabilities of the firm largely exceeded the assets.

3. The misrepresentations mentioned in the second paragraph of this statement induced the defendant to make the note now sued on, and there never was any other consideration for the making of such note.

No. 30.

THE FOURTH SCHEDULE—*continued.*

No. 30.

FIRST INDORSEE AGAINST MAKER.

(*Title*).

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the defendant, by his promissory note, now overdue, promised to pay to the order of *E. F.*, [*or* to *E. F.* or order] rupees [days after date].

2. That the said *E. F.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment*].

No. 31.

SUBSEQUENT INDORSEE AGAINST MAKER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. [*As in the last preceding form.*]

2. That the same was, by the indorsement of the said *E. F.* and of *G. H.* and *I. J.* [*or* and others] transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 32.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That *E. F.*, on the day of 18 , at , by his promissory note, now overdue, promised to pay to the defendant or order rupees months after date.

2. That the defendant indorsed the same to the plaintiff.

3. That on the day of 18 , the same was duly presented for payment, but was not paid.

[*Or state facts excusing want of presentment.*]

4. That the defendant had notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 33.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a promissory note, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 at , to the order of the defendant, for the sum of rupees [payable days after date].

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff. [*Or*, that the said *E. F.* indorsed the same to the plaintiff.]

3, 4 and 5. [*Same as 3, 4 and 5 of the last preceding form.*]

[*Demand of judgment.*]

No. 34.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to him a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant.

2, 3 and 4. [*Same as in 3, 4 and 5 in Form No. 33.*]

[*Demand of judgment.*]

No. 35.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That a promissory note, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , to the order of one *G. H.*, for the sum of rupees [payable days after date], and indorsed by the said *G. H.* to the defendant, was by the indorsement of the defendant [and others] transferred to the plaintiff.

2, 3 and 4. [*As in No. 33.*]

[*Demand of judgment.*]

No. 36.

THE FOURTH SCHEDULE—*continued.*

No. 36.

SUBSEQUENT INDORSER AGAINST MAKER, AND FIRST AND SECOND INDORSER.

IN THE COURT OF AT

Civil Suit No.

A. B. of

against

C. D. of

E. F. of

and

G. H. of

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, *C D.*, by his promissory note, now overdue, promised to pay to the order of the defendant, *E. F.*, rupees [months after date].

2. That the said *E. F.* indorsed the same to the defendant, *G. H.*, who indorsed it to the plaintiff.

3. That on the day of 18 , the same was presented [*or state facts excusing want of presentment*] to the said *C. D.* for payment, but was not paid.

4. That the said *E. F.* and *G. H.* had notice thereof.

5. That they have not paid the same.

[*Demand of judgment.*]

No. 37.

DRAWER AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , by his bill of exchange, now overdue, the plaintiff required the defendant to pay to him rupees [days after date, *or* sight, thereof].

2. That the defendant accepted the said bill. [*If the bill is payable at a certain time after sight, the date of acceptance should be stated; otherwise it is not necessary.*]

3. That he has not paid the same.

4. That by reason thereof the plaintiff incurred expenses in and about the presenting and noting of the bill, and incidental to the dishonour thereof.

[*Demand of judgment.*]

[NOTE.—Where the bill is payable to a third party, for paragraphs 1, 2, 3, say——]

1. That on, &c., at &c., by his bill of exchange, now overdue, directed to the defendant, the plaintiff required the defendant to pay to *E. F.* or order rupees months after date.

2. That the plaintiff delivered the said bill to the said *E. F.* on

3. That the defendant accepted the said bill, but did not pay the same, whereupon the same was returned to the plaintiff.

No. 38.

THE FOURTH SCHEDULE—*continued.*

No. 38.

PAYEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the plaintiff rupees after sight thereof.

2. That he has not paid the same.

[*Demand of judgment.*]

No. 39.

FIRST INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant accepted a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring the defendant to pay to the order of one *G. H.* rupees after sight thereof.

2. That the said *G. H.* indorsed the same to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 40.

SUBSEQUENT INDORSEE AGAINST ACCEPTOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. [*As in the last preceding form, to the end of article 1.*]

2. That by the indorsement of the said *G. H.* [and others], the same was transferred to the plaintiff.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 41.

PAYEE AGAINST DRAWER FOR NON-ACCEPTANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by his bill of exchange, directed to *E. F.*, required the said *E. F.* to pay to the plaintiff rupees [days after sight.]

2. That

THE FOURTH SCHEDULE—*continued.*

2. That on the day of 18 , the same was duly presented to the said *E. F.* for acceptance, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 42.

FIRST INDORSEE AGAINST FIRST INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to the plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of the defendant rupees [days] after sight [*or* after date, *or* at sight] thereof, [and accepted by the said *G. H.* on the day of 18].

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 43.

SUBSEQUENT INDORSEE AGAINST FIRST INDORSER; THE INDORSEMENT BEING SPECIAL.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant indorsed to one *E. F.* a bill of exchange, now overdue, made [*or* purporting to have been made] by one *G. H.*, on the day of 18 , at , requiring one *I. J.* to pay to the order of the defendant rupees days after sight thereof [*or otherwise*], and accepted by the said *I. J.* on the day of 18 . [*This clause may be omitted if not according to the fact.*]

2. That the same was, by the indorsement of the said *E. F.* [and others], transferred to the plaintiff.

3. That on the day of 18 the same was presented to the said *I. J.* for payment, and was dishonoured.

4. That the defendant had due notice thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

No. 44.

THE FOURTH SCHEDULE—*continued.*

No. 44.

SUBSEQUENT INDORSEE AGAINST HIS IMMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the defendant indorsed to plaintiff a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 45.

SUBSEQUENT INDORSEE AGAINST INTERMEDIATE INDORSER.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That a bill of exchange, now overdue, made [*or* purporting to have been made] by one *E. F.*, on the day of 18 , at , requiring one *G. H.* to pay to the order of one *I. J.* rupees days after sight thereof [*or otherwise*], [accepted by the said *G. H.*] and indorsed by the said *I. J.* to the defendant, was, by the indorsement of the defendant [and others], transferred to the plaintiff.

2. That on the day of 18 , the same was presented to the said *G. H.* for payment, and was dishonoured.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[*Demand of judgment.*]

No. 46.

INDORSEE AGAINST DRAWER, ACCEPTOR AND INDORSER.

IN THE COURT OF , AT

Civil Suit No.

A. B. of

against

C. D. of

E. F. of

and

G. H. of

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant, *C. D.*, by his bill of exchange, now overdue, directed to the defendant *E. F.*, required

THE FOURTH SCHEDULE—*continued.*

required the said *E. F.* to pay to the order of the defendant *G. H.* rupees [days after sight thereof.]

2. That on the day of 18 , the said *E. F.* accepted the same.

3. That the said *G. H.* indorsed the same to the plaintiff.

4. That on the day of 18 , the same was presented to the said *E. F.* for payment, and was dishonoured.

5. That the other defendants had due notice thereof.

6. That they have not paid the same.

[*Demand of judgment.*]

No. 47.

Payee against Drawer for Non-acceptance of a Foreign Bill.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant by his bill of exchange, drawn in Calcutta, required one *E. F.* to pay to the plaintiff in [London] pounds sterling, [sixty days] after sight thereof.

2. That on the day of 18 , the same was presented to the said *E. F.* for acceptance, and was dishonoured, and was thereupon duly protested.

3. That the defendant had due notice thereof.

4. That he has not paid the same.

[5. That the value of pounds sterling, at the time of the service of notice of protest on the defendant, was rupees annas.]

Wherefore the plaintiff demands judgment against the defendant for rupees, with [ten per centum] compensation and interest from the day of 18 .

No. 48.

Payee against Acceptor.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , one *E. F.*, by his bill of exchange, now overdue, directed to the defendant, required the defendant to pay to the plaintiff rupees after date [*or* days after sight] thereof.

2. That on the day of 18 , the defendant accepted the said bill.

3. That he has not paid the same.

[*Demand of judgment.*]

No. 49.

THE FOURTH SCHEDULE—*continued.*

No. 49.

ON A MARINE [OPEN] POLICY, ON VESSEL LOST BY PERILS OF THE SEA, &c.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. The plaintiff was the owner of [*or* had an interest in] the ship at the time of her loss, as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees to them paid [*or* which the plaintiff then promised to pay] executed to him a policy of insurance upon the said ship, a copy of which is hereto annexed; [*or*, whereby they promised to pay to the plaintiff, within days after proof of loss and interest, all loss and damage accruing to him by reason of the destruction or injury of the said ship, during her next voyage from to , whether by perils of the sea or by fire, or by other causes therein mentioned, not exceeding rupees].

3. That the said ship, while proceeding on the voyage mentioned in the said policy, was on the day of 18 , totally lost by the perils of the sea [*or otherwise*].

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 50.

ON CARGO, LOST BY FIRE:—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] on board the ship at the time of her loss as hereinafter mentioned.

2. That on the day of 18 , at , the defendants, in consideration of rupees which the plaintiff then paid [*or* promised to pay], executed to him a policy of insurance upon the said goods, a copy of which is hereto annexed; [*or*, whereby they promised to pay to the plaintiff rupees in case of the total loss, by fire or other causes mentioned, of the said goods before their landing at ; *or*, in case of partial loss, such damage as the plaintiff might sustain thereby, provided the same should not exceed per centum of the whole value of the goods].

3. That on the day of 18 , at , while proceeding on the voyage mentioned in the said policy, the said goods were totally destroyed by fire (*or*, as the case may be).

4, 5 and 6. [*As in paragraphs 4, 5 and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 51.

THE FOURTH SCHEDULE—*continued.*

No. 51.

ON FREIGHT:—VALUED POLICY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff had an interest in the freight to be earned by the ship on her voyage from to at the time of her loss as hereinafter mentioned and that a large quantity of goods was shipped upon freight in her at that time.

2. That on the day of 18 , at , the defendant, in consideration of rupees to him paid, executed to the plaintiff a policy of insurance upon the said freight, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That the said ship, while proceeding upon the voyage mentioned in the said policy, was, on the day of 18 , totally lost by [the perils of the sea].

4. That the plaintiff has not received any freight from the said ship, nor did she earn any on the said voyage, by reason of her loss as aforesaid.

5 and 6. [*As in Form No 49.*]

[*Demand of judgment.*]

No. 52.

FOR A LOSS BY GENERAL AVERAGE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff was the owner of [*or* had an interest in] [one hundred bales of cotton] shipped on board a vessel called the *Y. Z.*, from to , at the time of the loss hereafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [which the plaintiff then promised to pay], the defendant executed to the plaintiff a policy of insurance upon his said goods, a copy of which is hereto annexed [*or state its tenor, as before*].

3. That on the day of 18 , while proceeding on the voyage mentioned in the said policy, the said vessel was so endangered by perils of the sea that the master and crew thereof were compelled to, and did, cast into the sea a large part of her rigging and furniture.

4. That the plaintiff was, by reason thereof, compelled to, and did, pay a general average loss of rupees.

5. That on the day of 18 , he furnished the defendant with proof of his loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendant has not paid the said loss.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 53.

For a Particular Average Loss.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1 and 2. [*As in the last preceding form.*]

3. That on the day of 18 , while on the high seas, the sea-water broke into the said ship, and damaged the said [cotton] to the amount of rupees.

4 and 5. [*As in paragraphs 5 and 6 of the last preceding form.*]

[*Demand of judgment.*]

No. 54.

On a Fire-insurance Policy.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff [was the owner of, *or*] had an interest in a [dwelling-house, known as No. , street, in the city of ,] at the time of its destruction [*or*, injury] by fire as hereinafter mentioned.

2. That on the day of 18 , at , in consideration of rupees [to them paid], the defendants executed to the plaintiff a policy of insurance on the said [premises], a copy of which is hereto annexed [*or state its tenor*].

3. That on the day of 18 , the said [dwelling-house] was totally destroyed [*or*, greatly damaged] by fire.

4. That the plaintiff's loss thereby was rupees.

5. That on the day of 18 , he furnished the defendants with proof of his said loss and interest, and otherwise duly performed all the conditions of the said policy on his part.

6. That the defendants have not paid the said loss.

[*Demand of judgment.*]

No. 55.

Against Surety for Payment of Rent.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , one *E. F.* hired from the plaintiff, for the term of years, the [house No. street ,] at the annual rent of rupees, payable [monthly].

2. That [at the same time and place] the defendant agreed, in consideration of the letting of the said premises to the said *E. F.*, to guarantee the punctual payment of the said rent.

3. That

THE FOURTH SCHEDULE—*continued.*

3. That the rent aforesaid for the month of
18 , amounting to rupees, has not been paid.

[*If, by the terms of the agreement, notice is required to be given to the surety, add.*—]

4. That on the day of 18 , the plaintiff gave notice to the defendant of the non-payment of the said rent, and demanded payment thereof.

5. That he has not paid the same.

[*Demand of judgment.*]

B.—Plaints for Compensation for Breach of Contract.

No. 56.

For Breach of Agreement to convey Land.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at
the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*, That on, &c., the defendant agreed with the plaintiff that, in consideration of a deposit of rupees then paid, and of the further sum of [ten thousand] rupees payable as hereinafter mentioned, he would, on the day of 18 , at
execute to the plaintiff a sufficient conveyance of [the house No. , street, in the city of , free from all incumbrances; and the plaintiff agreed to pay [ten thousand] rupees for the same on delivery thereof.]

2. That on the day of 18 , the plaintiff demanded the conveyance of the said property from the defendant and tendered rupees to the defendant [*or*, that all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part].

3. That the defendant has not executed any conveyance of the said property to the plaintiff [*or*, that there is a mortgage upon the said property, made by
to , for rupees, registered in the office of , on the day of 18 , and still unsatisfied, *or any other defect of title*].

4. That the plaintiff has thereby lost the use of the money paid by him as such deposit as aforesaid and of other moneys provided by him for the completion of the said purchase, and has lost the expenses incurred by him in investigating the title of the defendant and in preparing to perform the agreement on his part, and has incurred expense in endeavouring to procure the performance thereof by the defendant.

5. The plaintiff prays judgment for rupees compensation.

No. 57.

For Breach of Agreement to purchase Land.

(*Title.*)

A.B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant entered into an agreement, under their hands, of which a copy is hereto annexed.

[*Or*,

THE FOURTH SCHEDULE—*continued.*

[*Or*, That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should sell to the defendant and that the defendant should purchase from the plaintiff forty bighás of land in the village of for rupees.]

2. That on the day of 18 , at , the plaintiff, being then the absolute owner of the said property [and the same being free from all incumbrances, as was made to appear to the defendant], tendered to the defendant a sufficient instrument of conveyance of the same [*or*, was ready and willing, and offered, to convey the same to the defendant by a sufficient instrument,] on the payment by the defendant of the said sum.

3. That the defendant has not paid the same.

[*Demand of judgment.*]

No. 58.

Another Form.

FOR NOT COMPLETING A PURCHASE OF IMMOVEABLE PROPERTY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That by an agreement dated the day of 18 , it was agreed by and between the plaintiff and the defendant that the plaintiff should sell to the defendant and the defendant should purchase from the plaintiff a house and land at the price of rupees, upon the terms and conditions following (that is to say)—

(*a*) That the defendant should pay the plaintiff a deposit of rupees in part of the said purchase-money on the signing of the said agreement, and the remainder on the day of 18 , on which day the said purchase should be completed.

(*b*) That the plaintiff should deduce and make a good title to the said premises on or before the day of 18 , and on payment of the said remainder of the said purchase-money as aforesaid should execute to the defendant a proper conveyance of the said premises, to be prepared at the defendant's expense.

2. That all conditions were fulfilled, and all things happened and all times elapsed necessary to entitle the plaintiff to have the said agreement performed by the defendant on his part, yet the defendant did not pay the plaintiff the remainder of the said purchase-money as aforesaid on his part.

3. That the plaintiff has thereby lost the expense which he incurred in preparing to perform the said agreement on his part, and has been put to expense in endeavouring to procure the performance thereof by the defendant.

[*Demand of judgment.*]

No. 59.

FOR NOT DELIVERING GOODS SOLD.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the defendant should deliver [one hundred barrels of flour] to

THE FOURTH SCHEDULE—*continued.*

to the plaintiff [on the day of 18], and that the plaintiff should pay therefor rupees on delivery.

2. That on the [said] day the plaintiff was ready and willing, and offered to pay the defendant the said sum upon delivery of the said goods.

3. That the defendant has not delivered the same, whereby the plaintiff has been deprived of the profits which would have accrued to him from such delivery.

[*Demand of judgment.*]

No. 60.

FOR BREACH OF CONTRACT TO EMPLOY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should serve the defendant as [an accountant, *or* in the capacity of foreman, *or as the case may be*], and that the defendant should employ the plaintiff as such, for the term of [one year], and pay him for his services rupees [monthly].

2. That on the day of 18 , the plaintiff entered upon the service of the defendant as aforesaid, and has ever since been, and still is, ready and willing to continue in such service during the remainder of the said year, whereof the defendant always had notice.

3. That on the day of 18 , the defendant wrongfully discharged the plaintiff, and refused to permit him to serve as aforesaid, or to pay him for his services.

[*Demand of judgment.*]

No. 61.

FOR BREACH OF CONTRACT TO EMPLOY, WHERE THE EMPLOYMENT NEVER TOOK EFFECT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. [*As in last preceding Form.*]

2. That on the day of 18 , at , the plaintiff offered to enter upon the service of the defendant, and has ever since been ready and willing so to do.

3. That the defendant refused to permit the plaintiff to enter upon such service, or to pay him for his services.

[*Demand of judgment.*]

No. 62.

THE FOURTH SCHEDULE—*continued.*

No. 62.

For Breach of Contract to serve.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant mutually agreed that the plaintiff should employ the defendant at an [annual] compensation of rupees, and that the defendant should serve the plaintiff as [an artist] for the term of [one year].

2. That the plaintiff has always been ready and willing to perform his part of the said agreement [and on the day of 18 , offered so to do].

3. That the defendant [entered upon] the service of the plaintiff on the above-mentioned day, but afterwards, on the day of 18 , he refused to serve the plaintiff as aforesaid.

[*Demand of judgment.*]

No. 63.

Against a Builder for defective Workmanship.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at the plaintiff and defendant entered into an agreement, of which a copy is hereto annexed.

[*Or state the tenor of the contract.*]

[2. That the plaintiff duly performed all the conditions of the said agreement on his part].

3. That the defendant [built the house referred to in the said agreement in a bad and unworkmanlike manner].

[*Demand of judgment.*]

No. 64.

By the Master against the Father or Guardian of an Apprentice.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant entered into an agreement, under his hand and seal,* a copy of which is hereto annexed.

[*Or state the tenor of the contract.*]

2. That after the making of the said agreement the plaintiff received the said [*apprentice*] into his service as such apprentice for the term aforesaid, and has always performed and been ready and willing to perform all things in the said agreement on his part to be performed.

3. That on the day of 18 , the said [*apprentice*] wilfully absented himself from the service of the plaintiff, and continues so to do.

(*Demand of judgment.*)

* The form given in Act XIX of 1850 requires the seal of the father or guardian.

No. 65.

THE FOURTH SCHEDULE—*continued.*

No. 65.

By the Apprentice against the Master.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered into an agreement with the plaintiff and his [father], *E. F.*, under their hands and seals, a copy of which is hereto annexed.

2. That after the making of the said agreement the plaintiff entered into the service of the defendant with him after the manner of an apprentice to serve for the term mentioned in the said agreement, and has always performed all things in the said agreement contained on his part to be performed.

3. That the defendant has not [instructed the plaintiff in the business of , *or state any other breach, such as cruelty, failure to provide sufficient food, or other ill-treatment*].

[*Demand of judgment.*]

No. 66.

On a Bond for the Fidelity of a Clerk.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , plaintiff employed one *E. F.* as a clerk.

2. That on the day of 18 , at , the defendant agreed with the plaintiff, that if the said *E. F.* should not faithfully perform his duties as a clerk to the plaintiff, or should fail to account to the plaintiff for all moneys, evidences of debt, or other property received by him for the use of the plaintiff, the defendant would pay to the plaintiff whatever loss he might sustain by reason thereof, not exceeding rupees.

[*Or*, 2. That at the same time and place, the defendant bound himself to the plaintiff, by a writing under his hand, in the penal sum of rupees, conditioned that if the said *E. F.* should faithfully perform his duties as clerk and cashier to the plaintiff, and should justly account to the plaintiff for all moneys, evidences of debt, or other property which should be at any time held by him in trust for the plaintiff, the same should be void but not otherwise.]

[*Or*, 2. That at the same time and place, the defendant executed to the plaintiff a bond, a copy of which is hereto annexed.]

3. That between the day of 18 , and the day of 18 , the said *E. F.* received money and other property, amounting to the value of rupees, for the use of the plaintiff, for which he has not accounted to him, and the same still remains due and unpaid.

[*Demand of judgment.*]

THE FOURTH SCHEDULE—*continued.*

No. 67.

By Tenant against Landlord, with Special Damage.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, by an instrument in writing, let to the plaintiff [the house No. , street], for the term of years, contracting with the plaintiff that he, the plaintiff, and his legal representatives should quietly enjoy possession thereof for the said term.

2. That all conditions were fulfilled and all things happened necessary to entitle the plaintiff to maintain this suit.

3. That on the day of during the said term, one *E. F.*, who was the lawful owner of the said house, lawfully evicted the plaintiff therefrom, and still withholds the possession thereof from him.

4. That the plaintiff was thereby [prevented from continuing the business of a tailor at the said place, was compelled to expend rupees in moving, and lost the custom of *G. H.* and *I. J.* by such removal].

[*Demand of judgment.*]

No. 68.

For Breach of Warranty of Moveables.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant warranted a steam-engine to be in good working order, and thereby induced the plaintiff to purchase the same of him, and to pay him rupees therefor.

2. That the said engine was not then in good working order, whereby the plaintiff incurred expense in having the said engine repaired, and lost the profits which could otherwise have accrued to him while the engine was under repair.

[*Demand of judgment.*]

No. 69.

On an Agreement of Indemnity.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the plaintiff and defendant being partners in trade under the firm of *A. B. & C. D.*, dissolved the said partnership, and mutually agreed that the defendant should take and keep all the partnership-property, pay all debts of the firm, and indemnify the plaintiff against all claims that might be made upon him on account of any indebtedness of the said firm.

2. That the plaintiff duly performed all the conditions of the said agreement on his part.

3 That

THE FOURTH SCHEDULE—*continued.*

3. That on the day of 18 [a judgment was recovered against the plaintiff and defendant by one *E. F.*, in the High Court of Judicature at , upon a debt due from the said firm to the said *E. F.*, and on the day of 18 ,] the plaintiff paid rupees [in satisfaction of the same].

4. That the defendant has not paid the same to the plaintiff.

[*Demand of judgment.*]

No. 70.

BY SHIPOWNER AGAINST FREIGHTOR FOR NOT LOADING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at the plaintiff and defendant entered into an agreement, a copy of which is hereto annexed.

[*Or*, 1. That on , at , the plaintiff and defendant agreed by charter-party that the defendant should deliver to the plaintiff's ship at on the day of 18 , five hundred tons of merchandise, which she should carry to , and there deliver, on payment of freight; and that the defendant should have days for loading, days for discharge, and days for demurrage, if required, at rupees per day.]

2. That at the time fixed by the said agreement the plaintiff was ready and willing, and offered, to receive [the said merchandise, *or*, the merchandise mentioned in the said agreement] from the defendant.

3. That the period allowed for loading and demurrage has elapsed, but the defendant has not delivered the said merchandise to the said vessel.

Wherefore, the plaintiff demands judgment for rupees for demurrage and rupees additional for compensation.

C.—PLAINTS FOR COMPENSATION UPON WRONGS.

No. 71.

FOR TRESPASS ON LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , at , the defendant entered upon certain land of the plaintiff, known as [and depastured the same with cattle, trod down the grass, cut the timber, and otherwise injured the same]

[*Demand of judgment.*]

No. 72.

THE FOURTH SCHEDULE—*continued.*

No. 72.

For Trespass in entering a Dwelling-house.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the defendant entered a dwelling-house of the plaintiff called , and made a noise and disturbance therein for a long time, and broke open the doors of the said dwelling-house, and removed, took and carried away the fixtures and goods of the plaintiff therein, and disposed of the same to the defendant's own use, and expelled the plaintiff and his family from the possession of the said dwelling-house, and kept them so expelled for a long time.

2. That the plaintiff was thereby prevented from carrying on his business, and incurred expense in procuring another dwelling-house for himself and family.

[*Demand of judgment.*]

No. 73.

For Trespass on Moveables.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant broke open ten barrels of rum belonging to the plaintiff, and emptied their contents into the street [*or*, seized and took the plaintiff's goods, that is to say, iron, rice and household furniture, *or as the case may be*, and carried away the same and disposed of them to his own use]:

or, seized and took the plaintiff's cows and bullocks, and impounded them and kept them impounded for a long time.

2. That the plaintiff was thereby deprived of the use of the cows and bullocks during that time, and incurred expense in feeding them and in getting them restored to him; and was also prevented from selling them at fair, as he otherwise would have done, and the said cows and bullocks are diminished in value to the plaintiff [*otherwise, state the injury according to the facts*].

[*Demand of judgment.*]

No. 74.

For the Conversion of Moveable Property.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff was in possession of certain goods described in the schedule hereto annexed [*or*, of one thousand barrels of flour].

2. That on that day, at , the defendant converted the same to his own use, and wrongfully deprived the plaintiff of the use and possession of the same.

[*Demand of judgment.*]

The Schedule.

No. 75.

THE FOURTH SCHEDULE—*continued.*

No. 75.

Against a Warehouseman for Refusal to deliver goods.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, in consideration of the payment to him of rupees [*or*, rupees per barrel, per month, &c.], agreed to keep in his godown [one hundred barrels of flour], and to deliver the same to the plaintiff on payment of the said sum.

2. That thereupon the plaintiff deposited with the defendant the said [hundred barrels of flour].

3. That on the day of 18 , the plaintiff requested the defendant to deliver the said goods, and tendered him rupees [*or* the full amount of storage due thereon], but the defendant refused to deliver the same.

4. That the plaintiff was thereby prevented from selling the said goods to *E. F.*, and the same are lost to the plaintiff.

[*Demand of judgment.*]

No. 76.

For procuring Property by Fraud.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant, for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he, the defendant, was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell [and deliver] to the defendant [dry goods] of the value of rupees.

3. That the said representations were false [*or, state the particular falsehoods*], and were then known by the defendant to be so.

4. That the defendant has not paid for the said goods. [*Or, if the goods were not delivered,* That the plaintiff, in preparing and shipping the said goods and procuring their restoration expended rupees.]

[*Demand of judgment.*]

No. 77.

For fraudulently procuring Credit to be given to another Person.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant represented to the plaintiff that one *E. F.* was solvent and in good credit, and worth rupees over all his liabilities [*or*, that *E. F.* then held a responsible situation and was in good circumstances, and might safely be trusted with goods on credit].

2. That

THE FOURTH SCHEDULE—*continued.*

2. That the plaintiff was thereby induced to sell to the said *E. F.* [rice] of the value of rupees [on month's credit].

3. That the said representations were false and were then known by the defendant to be so, and were made by him with intent to deceive and defraud the plaintiff [*or*, to deceive and injure the plaintiff].

4. That the said *E. F.* [did not pay for the said goods at the expiration of the credit aforesaid, *or*] has not paid for the said rice, and the plaintiff has wholly lost the same by reason of the premises.

[*Demand of judgment.*]

No. 78.

FOR POLLUTING THE WATER UNDER THE PLAINTIFF'S LAND.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That he is, and at all the times hereinafter mentioned was, possessed of certain land called and situate in , and of a well therein, and of water in the said well, and was entitled to the use and benefit of the said well and of the said water therein, and to have certain springs and streams of water which flowed and ran into the said well to supply the same to flow or run without being fouled or polluted.

2. That on the day of 18 , the defendant wrongfully fouled and polluted the said well and the said water therein and the said springs and streams of water which flowed into the said well.

3. That by reason of the premises the said water in the said well became impure and unfit for domestic and other necessary purposes, and the plaintiff and his family are deprived of the use and benefit of the said well and water.

[*Demand of judgment.*]

No. 79.

FOR CARRYING ON A NOXIOUS MANUFACTURE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That the plaintiff is, and at all the times hereinafter mentioned was, possessed of certain lands called situate in .

2. That ever since the day of 18 , the defendant has wrongfully caused to issue from certain smelting works carried on by the defendant large quantities of offensive and unwholesome smoke and other vapours and noxious matter, which spread themselves over and upon the said lands, and corrupted the air, and settled on the surface of the said lands.

3. That thereby the trees, hedges, herbage and crops of the plaintiff growing on the said lands were damaged and deteriorated in value, and the cattle and live-stock of the plaintiff on the said lands became unhealthy, and divers of them were poisoned and died.

4. That

THE FOURTH SCHEDULE—*continued.*

4. That by reason of the premises, the plaintiff was unable to depasture the said lands with cattle and sheep as he otherwise might have done, and was obliged to remove his cattle, sheep and farming stock therefrom, and has been prevented from having so beneficial and healthy a use and occupation of the said lands as he otherwise would have had.

[*Demand of judgment.*]

No. 80.

FOR OBSTRUCTING A WAY.

(Title.)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of [a house in the village of].

2. That he was entitled to a right of way from the said [house] over a certain field to a public highway and back again from the said highway over the said field to the said house, for himself and his servants [with vehicles, *or*, on foot] at all times of the year.

3. That on the day of 18 , defendant wrongfully obstructed the said way, so that the plaintiff could not pass [with vehicles, *or*, on foot, *or*, in any manner] along the said way [and has ever since wrongfully obstructed the same].

4. [*State special damage, if any.*]

[*Demand of judgment.*]

Another Form.

1. That the defendant wrongfully dug a trench and heaped up earth and stones in the public highway leading from to so as to obstruct it.

2. That thereby the plaintiff, while lawfully passing along the said highway, fell over the said earth and stones [*or*, into the said trench] and broke his arm, and suffered great pain, and was prevented from attending to his business for a long time, and incurred expense for medical attendance.

[*Demand of judgment.*]

No. 81.

FOR DIVERTING A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and at the time hereinafter mentioned was, possessed of a mill situated on a [stream] known as the , in the village of , district of

2. That by reason of such possession the plaintiff was entitled to the flow of the said stream for working the said mill.

3. That on the day of 18 , the defendant, by cutting the bank of the said stream, wrongfully diverted the water thereof, so that less water ran into the plaintiff's mill.

4. That by reason thereof, the plaintiff has been unable to grind more than sacks per day, whereas, before the said diversion of water, he was able to grind sacks per day.

[*Demand of judgment.*]

No. 82.

THE FOURTH SCHEDULE—*continued.*

No. 82.

FOR OBSTRUCTING A RIGHT TO USE WATER FOR IRRIGATION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff is, and was at the time hereinafter mentioned, possessed of certain lands situate, &c., and entitled to take and use a portion of the water of a certain stream for irrigating the said lands.

2. That on the day of the defendant prevented the plaintiff from taking and using the said portion of the said water as aforesaid, by wrongfully obstructing and diverting the said stream.

[*Demand of judgment.*]

No. 83.

FOR WASTE BY A LESSEE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant hired from him [the house No. , street] for the term of

2. That the defendant occupied the same under such hiring.

3. That during the period of such occupation, the defendant greatly injured the premises [defaced the walls, tore up the floors, and broke down the doors; *or otherwise specify the injuries as far as possible*].

The plaintiff prays judgment for rupees compensation.

No. 84.

FOR ASSAULT AND BATTERY.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

That on the day of 18 , at , the defendant assaulted and beat him.

The plaintiff prays judgment for rupees compensation.

No. 85.

THE FOURTH SCHEDULE—*continued.*

No. 85.

For Assault and Battery, with special Damage.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant assaulted and beat him until he became insensible.

2. That the plaintiff was thereby disabled from attending to his business for [six weeks thereafter], and was compelled to pay rupees for medical attendance, and has been ever since disabled [from using his right arm]. [*Or otherwise state the damage, as the case may be.*]

[*Demand of judgment.*]

No. 86.

For Assault and False Imprisonment.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant assaulted the plaintiff and imprisoned him for days [*or* hours]; [*state special damage, if any, thus*:—]

2. That by reason thereof the plaintiff suffered great pain of body and mind and was exposed and injured in his credit and circumstances, and was prevented from carrying on his business and from providing for his family by his personal care and attention, and incurred expense in obtaining his liberation from the said imprisonment [*or otherwise, as the case may be.*]

[*Demand of judgment.*]

No. 87.

For Injuries caused by Negligence on a Railroad.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendants were common carriers of passengers by railway between and

2. That on that day the plaintiff was a passenger in one of the carriages of the defendants on the said road.

3. That

THE FOURTH SCHEDULE—*continued.*

3. That while he was such passenger, at [*or*, near the station of ; *or*, between the stations of and], a collision occurred on the said railway, caused by the negligence and unskilfulness of the defendants' servants, whereby the plaintiff was much injured [having his leg broken, his head cut, &c., *and state the special damage, if any, as*], and incurred expense for medical attendance, and is permanently disabled from carrying on his former business as [a salesman].

[*Demand of judgment.*]

[*Or thus* :— 2. That on that day the defendants by their servants so negligently and unskilfully drove and managed an engine and a train of carriages attached thereto upon and along the defendants' railway which the plaintiff was then lawfully crossing, that the said engine and train were driven and struck against the plaintiff, whereby, *&c., as in* § 3.]

No. 88.

FOR INJURIES CAUSED BY NEGLIGENT DRIVING.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. The plaintiff is a shoemaker, carrying on business at
The defendant is a merchant of

2. On the [23rd May, 1875], the plaintiff was walking eastward along Chowringhee, in the City of Calcutta, at about 3 o'clock in the afternoon. He was obliged to cross Harrington Street, which is a street running into Chowringhee at right angles. While he was crossing this street, and just before he could reach the foot-pavement on the further side thereof, a carriage of the defendant's, drawn by two horses, under the charge and control of the defendant's servants, was negligently, suddenly, and without any warning, turned at a rapid and dangerous pace out of Harrington Street into Chowringhee. The pole of the carriage struck the plaintiff and knocked him down, and he was much trampled by the horses.

3. By the blow and fall and trampling the plaintiff's left arm was broken, and he was bruised and injured on the side and back, as well as internally, and in consequence thereof the plaintiff was for four months ill and in suffering, and unable to attend to his business, and incurred heavy medical and other expenses, and sustained great loss of business and profits.

The plaintiff claims rupees damages.

(*Title.*)

Written Statement of Defendant.

1. The defendant denies that the carriage mentioned in the plaint was the defendant's carriage, or that it was under the charge or control of the defendant's servants. The carriage belonged to [Messrs. *E.F.* and *G.H.*] of Street, Calcutta, livery stable-keepers, employed by the defendant to supply him with carriages and horses; and the person under whose charge and control the said carriage was, was the servant of the said [Messrs. *E. F.* and *G. H.*]

2. The defendant does not admit that the said carriage was turned out of Harrington Street either negligently, suddenly, or without warning, or at a rapid or dangerous pace.

3. The defendant says that the plaintiff might and could, by the exercise of reasonable care and diligence, have seen the said carriage approaching him, and avoided any collision with it.

4. The defendant does not admit the statements of the third paragraph of the plaint.

No. 89.

THE FOURTH SCHEDULE—*continued.*

No. 89.

FOR LIBEL; THE WORDS BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*], the following words concerning the plaintiff:—

[*Set forth the words used.*]

2. That the said publication was false and malicious.

[*Demand of judgment.*]

NOTE.—If the libel was in a language not the language of the Court, set out the libel *verbatim* in the foreign language in which it was published, and then proceed thus:—"Which said words, being translated into the language, have the meaning and effect following and were so understood by the persons to whom they were so published, that is to say [*here set out a literal translation of the libel in the language of the Court.*]

No. 90.

FOR LIBEL; THE WORDS NOT BEING LIBELLOUS IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That the plaintiff [is, and] was, on and before the day of 18 , a merchant doing business in the city of .

2. That on the day of 18 , at , the defendant published in a newspaper, called the [*or*, in a letter addressed to *E. F.*, *or otherwise how published*], the following words concerning the plaintiff:—

["*A. B.* of this city has modestly retired to foreign lands. It is said that creditors to the amount of rupees are anxiously seeking his address."]

3. That the defendant meant thereby that [the plaintiff had absconded to avoid his creditors, and with intent to defraud them].

4. That the said publication was false and malicious.

[*Demand of judgment.*]

No. 91.

FOR SLANDER; THE WORDS BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously spoke, in the hearing of *E. F.* [*or*, sundry persons], the following words concerning the plaintiff: ["He is a thief"].

2. That, in consequence of the said words, the plaintiff lost his situation as in the employ of .

[*Demand of judgment.*]

No. 92

THE FOURTH SCHEDULE—*continued.*

No. 92.

FOR SLANDER; THE WORDS NOT BEING ACTIONABLE IN THEMSELVES.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant falsely and maliciously said to one *E. F.* concerning the plaintiff: ["He is a young man of remarkably easy conscience."]

2. That the plaintiff was then seeking employment as a clerk, and the defendant meant, by the said words, that the plaintiff was not trustworthy as a clerk.

3. That in consequence of the said words [the said *E. F.* refused to employ the plaintiff as a clerk].

[*Demand of judgment.*]

No. 93.

FOR MALICIOUS PROSECUTION.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant obtained a warrant of arrest from [a magistrate of the said city, *or, as the case may be*] on a charge of , and the plaintiff was arrested thereon, and imprisoned for [days *or*, hours, and gave bail in the sum of rupees to obtain his release].

2. That in so doing, the defendant acted maliciously and without reasonable or probable cause.

3. That on the day of 18 , the said magistrate dismissed the complaint of the defendant, and acquitted the plaintiff.

4. That many persons, whose names are unknown to the plaintiff, hearing of the said arrest, and supposing the plaintiff to be a criminal, have ceased to do business with him; *or*, that, in consequence of the said arrest, the plaintiff lost his situation as clerk to one *E. F.*, *or*, that by reason of the premises the plaintiff suffered pain of body and mind, and was prevented from transacting his business, and was injured in his credit, and incurred expense in obtaining his release from the said imprisonment and in defending himself against the said complaint.

[*Demand of judgment.*]

D.—PLAINTS

THE FOURTH SCHEDULE—*continued.*

D.—Plaints in Suits for Specific Property.

No. 94.

By the Absolute Owner for the Possession of immoveable Property.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1 That *X. Y.* was the absolute owner [of the estate, *or*, the share of the estate, called , situate in the district of , the Government-revenue of which is rupees and the estimated value rupees, *or*, of the house No. , street in the town of Calcutta, the estimated value of which is rupees].

2. That on the day of 18 , *Z.* illegally dispossessed the said *X. Y.* of the said estate [*or* share *or* house].

3. That the said *X. Y.* has since died intestate, leaving the plaintiff, the said *A. B.*, his heir him surviving.

4. That the defendant withholds the possession of the estate [*or* share *or* house] from the plaintiff.

The plaintiff prays judgment;

(1) for the possession of the said premises;

(2) for rupees compensation for withholding the same.

Another Form.

A. B., the above-named plaintiff, states as follows:—

1. On the day of , the plaintiff, by an instrument in writing, let to the defendant a house and premises [No. 52, Russell Street, in the] for a term of five years from the day of , at the monthly rent of 300 rupees.

2. By the said instrument the defendant covenanted to keep the said house and premises in good and tenantable repair.

3. The said instrument also contained a clause of re-entry, entitling the plaintiff to re-enter upon the said house and premises, in case the rent thereby reserved, whether demanded or not, should be in arrear for twenty-one days, or in case the defendant should make default in the performance of any covenant upon his part to be performed.

4. On the day of 18 , a month's rent became due, and on the day of 18 , another month's rent became due; on the day of 18 , both had been in arrear for twenty-one days, and both are still due.

5. On the same day of 18 , the house and premises were not and are not now in good or tenantable repair, and it would require the expenditure of a large sum of money to re-instate the same in good and tenantable repair, and the plaintiff's reversion is much depreciated in value. The plaintiff claims:

(1) possession of the said house and premises;

(2) rupees for arrears of rent;

(3) rupees compensation for the defendant's breach of his covenant to repair;

(4) rupees for the occupation of the house and premises from the day of 18 to the day of recovering possession.

No. 95.

THE FOURTH SCHEDULE—*continued.*

No. 95.

BY THE TENANT.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That one *E. F.* is the absolute owner of [a piece of land in the town of Calcutta , bounded as follows:], the estimated value of which is rupees .

2. That on the day of 18 , the said *E. F.* let the said premises to the plaintiff for years, from .

3. That the defendant withholds the possession thereof from the plaintiff.

[*Demand of judgment.*]

No. 96.

FOR MOVEABLE PROPERTY WRONGFULLY TAKEN.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned [*or* was possessed of] one hundred barrels of flour, the estimated value of which is rupees.

2. That on that day, at , the defendant took the same.

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

No. 97.

FOR MOVEABLES WRONGFULLY DETAINED.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , plaintiff owned [*or, state facts showing a right to the possession*] the goods mentioned in the schedule hereto annexed [*or describe the goods*], the estimated value of which is rupees.

2. That from that day until the commencement of this suit, the defendant has detained the same from the plaintiff.

3. That before the commencement of this suit, to wit, on the day of 18 , the plaintiff demanded the same from the defendant, but he refused to deliver them.

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

The Schedule.

No. 98.

THE FOURTH SCHEDULE—*continued.*

No. 98.

AGAINST A FRAUDULENT PURCHASER AND HIS TRANSFEREE WITH NOTICE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , at , the defendant [*C. D.*] for the purpose of inducing the plaintiff to sell him certain goods, represented to the plaintiff that [he was solvent, and worth rupees over all his liabilities].

2. That the plaintiff was thereby induced to sell and deliver to the said *C. D.* [one hundred boxes of tea], the estimated value of which is rupees.

3. That the said representations were false, and were then known by the said *C. D.* to be so. [*Or*, That at the time of making the said representations, the said *C. D.* was insolvent, and knew himself to be so.]

4. That the said *C. D.* afterwards transferred the said goods to the defendant *E. F.* without consideration [*or* who had notice of the falsity of the representation].

The plaintiff prays judgment:

(1) for the possession of the said goods, or for rupees, in case such possession cannot be had;

(2) for rupees compensation for the detention thereof.

E.—PLAINTS IN SUITS FOR SPECIAL RELIEF.

No. 99.

FOR RESCISSION OF A CONTRACT ON THE GROUND OF MISTAKE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That on the day of 18 , the defendant represented to the plaintiff that a certain piece of ground belonging to the defendant, situated at , contained [ten bighás].

2. That the plaintiff was thereby induced to purchase the same at the price of rupees in the belief that the said representation was true, and signed an instrument of agreement, of which a copy is hereto annexed. But no conveyance of the same has been executed to him.

3. That on the day of 18 , the plaintiff paid the defendant rupees as part of such purchase-money.

4. That the said piece of ground contained in fact only [five bighás].

The plaintiff prays judgment:

(1) for rupees, with interest from the day of 18 ;

(2) that the said agreement of purchase be delivered up and cancelled.

No 100.

THE FOURTH SCHEDULE—*continued.*

No. 100.

FOR AN INJUNCTION RESTRAINING WASTE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is the absolute owner of [*describe the property*].

2. That the defendant is in possession of the same under a lease from the plaintiff.

3. That the defendant has [cut down a number of valuable trees, and threatens to cut down many more for the purpose of sale] without the consent of the plaintiff.

The plaintiff prays judgment that the defendant be restrained by injunction from committing or permitting any further waste on the said premises.

[*Pecuniary compensation might also be prayed.*]

No. 101.

FOR ABATEMENT OF A NUISANCE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That plaintiff is, and at all the times hereinafter mentioned was, the absolute owner of [the house No. , street, Calcutta].

2. That the defendant is, and at all the said times was, the absolute owner of [a plot of ground in the same street].

3. That on the day of 18 , the defendant erected upon his said plot a slaughter-house, and still maintains the same; and from that day until the present time has continually caused cattle to be brought and killed there [and has caused the blood and offal to be thrown into the street opposite the said house of the plaintiff].

4. That [the plaintiff has been compelled, by reason of the premises, to abandon the said house, and has been unable to rent the same].

The plaintiff prays judgment that the said nuisance be abated.

No. 102.

FOR AN INJUNCTION AGAINST THE DIVERSION OF A WATER-COURSE.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

[*As in Form No. 81.*]

The plaintiff prays judgment, that the defendant be restrained by injunction from diverting the water as aforesaid.

No. 103.

THE FOURTH SCHEDULE—*continued.*

No. 103.

For Restoration of moveable Property, threatened with Destruction, and for an Injunction.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That plaintiff is, and at all times hereinafter mentioned was, the owner of [a portrait of his grandfather which was executed by an eminent painter], and of which no duplicate exists [*or, state any facts showing that the property is of a kind that cannot be replaced by money*].

2. That on the day of 18 , he deposited the same for safe keeping with the defendant.

3. That on the day of 18 , he demanded the same from the defendant and offered to pay all reasonable charges for the storage of the same.

4. That the defendant refuses to deliver the same to the plaintiff and threatens to conceal, dispose of, cut or injure the same if required to deliver it up.

5. That no pecuniary compensation would be an adequate compensation to the plaintiff for the loss of the [painting].

The plaintiff prays judgment:

(1) that the defendant be restrained by injunction from disposing of, injuring or concealing the said [painting];

(2) that he return the same to the plaintiff.

No. 104.

Interpleader.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. That before the date of the claims hereinafter mentioned, one *G. H.* deposited with the plaintiff [*describe the property*] for [safe keeping].

2. That the defendant, *C. D.*, claims the same [under an alleged assignment thereof to him from the said *G. H.*].

3. That the defendant, *E. F.*, also claims the same [under an order of the said *G. H.* transferring the same to him].

4. That the plaintiff is ignorant of the respective rights of the defendants.

5. That he has no claim upon the said property, and is ready and willing to deliver it to such persons as the Court shall direct.

6. That this suit is not brought by collusion with either of the defendants.

The plaintiff prays judgment:

(1) that the defendants be restrained, by injunction, from taking any proceedings against the plaintiff in relation thereto;

(2) that they be required to interplead together concerning their claims to the said property;

[(3) that some person be authorized to receive the said property pending such litigation;]

(4) that upon delivering the same to such [person], the plaintiff be discharged from all liability to either of the defendants in relation thereto.

THE FOURTH SCHEDULE—*continued.*

No. 105.

ADMINISTRATION BY CREDITOR.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. *E. F.*, late of , was at the time of his death, and his estate still is, indebted to the plaintiff in the sum of [*here insert nature of debt and security, if any*].

2. The said *E. F.* made his will, dated the day of and thereof appointed *C. D.* executor [*or*, devised his estate in trust, &c., *or*, died intestate, *as the case may be*].

3. The said will was proved by the said *C. D.* [*or*, letters of administration were granted, &c.].

4. The defendant has possessed himself of the moveable [and immoveable, *or*, the proceeds of the immoveable] property of the said *E. F.*, and has not paid the plaintiff his said debt.

5. The said *E. F.* died on or about the day of

6. The plaintiff prays that an account may be taken of the moveable [and immoveable] property of the said *E. F.*, deceased, and that the same may be administered under the decree of the Court.

No. 106.

ADMINISTRATION BY SPECIFIC LEGATEE.

(*Title.*)

[*Alter Form No. 105 thus* :—]

[*Omit paragraph 1 and commence paragraph 2*] *E. F.*, late of , duly made his last will, dated the day of and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff [*here state the specific legacy.*]

For paragraph 4 substitute—

The defendant is in possession of the moveable property of the said *E. F.*, and, amongst other things, of the said [*here name the subject of the specific bequest*].

For the commencement of paragraph 6 substitute—

The plaintiff prays that the defendant may be ordered to deliver to him the said [*here name the subject of the specific bequest*] or that, *&c.*

No. 107.

ADMINISTRATION BY PECUNIARY LEGATEE.

(*Title.*)

[*Alter Form No. 105 thus* :—]

[*Omit paragraph 1 and substitute for paragraph 2*] *E. F.*, late of , duly made his last will, dated the day of , and thereof appointed *C. D.* executor, and by such will bequeathed to the plaintiff a legacy of rupees.

In paragraph 4, substitute "legacy" *for* "debt."

Another

THE FOURTH SCHEDULE—*continued.*

Another Form.

Between *E. F.* ... *Plaintiff,*

and

G. H. ... *Defendant*

E. F., the above-named plaintiff, states as follows :—

1. *A. B.* of *K* in the duly made his last will, dated the [first day of March, 1873], whereby he appointed the defendant and *M. N.* [who died in the testator's life-time] executors thereof, and bequeathed his property, whether moveable or immoveable, to his executors in trust, to pay the rents and income thereof to the plaintiff for his life; and after his decease, and in default of his having a son who should attain twenty-one, or a daughter who should attain that age or marry, upon trust as to his immoveable property for the person who would be the testator's heir-at-law, and as to his moveable property for the persons who would be the testator's next-of-kin if he had died intestate at the time of the death of the plaintiff, and such failure of his issue as aforesaid.

2. The testator died on the [first day of July, 1878], and his will was proved by the defendant on the [fourth day of October, 1878]. The plaintiff has not been married.

3. The testator was at his death entitled to moveable and immoveable property; the defendant entered into the receipt of the rents of the immoveable property and got in the moveable property; he has sold some part of the immoveable property.

The plaintiff claims—

(1) to have the moveable and immoveable property of *A. B.* administered in this Court, and for that purpose to have all proper directions given and accounts taken;

(2) such further or other relief as the nature of the case may require.

Between *E. F.* ... *Plaintiff,*

and

G. H. ... *Defendant*

Written Statement of Defendant.

1. *A. B.*'s will contained a charge of debts; he died insolvent; he was entitled at his death to some immoveable property which the defendant sold, and which produced the nett sum of rupees , and the testator had some moveable property which the defendant got in, and which produced the nett sum of rupees.

2. The defendant applied the whole of the said sums and the sum of rupees which the defendant received from rents of the immoveable property in the payment of the funeral and testamentary expenses and some of the debts of the testator.

3. The defendant made up his accounts and sent a copy thereof to the plaintiff on the [tenth day of January, 1880], and offered the plaintiff free access to the vouchers to verify such accounts, but he declined to avail himself of the defendant's offer.

4. The defendant submits that the plaintiff ought to pay the costs of this suit.

No. 108.

THE FOURTH SCHEDULE—*continued.*

No. 108.

EXECUTION OF TRUSTS.

IN THE COURT OF AT

Civil Suit, No.

A. B. of ... *Plaintiff,*

against

C. D. of the beneficiary [*or*, one of the beneficiaries] ... *Defendant.*

A. B., the above-named plaintiff, states as follows:—

1. That he is one of the trustees under an instrument of settlement bearing date on or about the day of made upon the marriage of *E. F.* and *G. H.*, the father and mother of the defendant [*or*, an instrument of assignment of the estate and effects of *E. F.* for the benefit of *C. D.*, the defendant, and other the creditors of *E. F.*].

2. The said *A. B.* has taken upon himself the burden of the said trust, and is in possession of [*or*, of the proceeds of] the moveable and immoveable property conveyed [*or* assigned] by the before-mentioned deed.

3. The said *C. D.* claims to be entitled to a beneficial interest under the before-mentioned deed.

4. The plaintiff is desirous to account for all the rents and profits of the said immoveable property [and the proceeds of the sale of the said, *or* of part of the said, immoveable property, *or* moveable, *or* the proceeds of the sale of, *or* of part of, the said moveable, property, *or* the profits accruing to the plaintiff as such trustee in the execution of the said trust]; and he prays that the Court will take the accounts of the said trust, and also that the whole of the said trust-estate may be administered in the Court for the benefit of the said *C. D.*, the defendant, and all other persons who may be interested in such administration, in the presence of the said *C. D.* and such other persons so interested as the Court may direct, or that the said *C. D.* may show good cause to the contrary.

[*N. B.—Where the suit is by a beneficiary, the plaint may be modelled,* mutatis mutandis, *on the plaint by a legatee.*]

No. 109.

FORECLOSURE OR SALE.

(*Title.*)

A. B., the above-named plaintiff, states as follows:—

1. By a mortgage-deed dated the day of 18 a house with the garden and appurtenances, situated within the jurisdiction of this Court, were conveyed by the defendant to him the plaintiff, his heirs [*or* executors, administrators,] and assigns, for securing the principal sum of Rs. together with interest thereon at the rate of Rs. per centum per annum, subject to redemption upon payment by the said defendant of the said principal and interest at a day long since past.

2. There is now due from the defendant to the plaintiff the sum of Rs. for principal and interest on the said mortgage.

3. The plaintiff prays (*a*) that the Court will order the defendant to pay him the said sum of Rs. with such further interest as may accrue between the filing of the plaint

THE FOURTH SCHEDULE—*continued.*

plaint and the day of payment, and also the costs of this suit, on some day to be named by the Court, and in default that the right to redeem the said mortgaged premises may be foreclosed and the plaintiff placed in possession of the same premises; or (*b*) that the said premises may be sold, and the proceeds applied in and towards the payment of the amount of the said principal, interest and costs; and (*c*) that if such proceeds shall not be sufficient for the payment in full of such amount, the defendant do pay to the plaintiff the amount of the deficiency with interest thereon at the rate of six per cent. per annum until realization; and (*d*) that for that purpose all proper directions may be given and accounts taken by the Court.

No. 110.

REDEMPTION.

(*Title.*)

[*Alter Form No. 109 thus :—*]

Transpose parties and also the facts in paragraph 1.

For paragraph 2, substitute—

2. There is now due from the plaintiff to the defendant, for principal and interest on the said mortgage, the sum of Rs. which the plaintiff is ready and willing to pay to the defendant, of which the defendant, before filing this plaint, had notice.

For paragraph 3, substitute—

The plaintiff prays that he may redeem the said premises and that the defendant may be ordered to re-convey the same to him upon payment of the said sum of Rs. and interest, with such costs (if any), as the Court may order, upon a day to be named by the Court, and that the Court will give all proper directions for the preparation and execution of such re-conveyance and doing such other acts as may be necessary to put him into possession of the said premises, freed from the said mortgage.

No. 111.

SPECIFIC PERFORMANCE. (No. 1.)

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. By an agreement dated the day of and signed by the above-named defendant, *C., D.*, he the said *C. D.* contracted to buy of [*or* sell to] him certain immoveable property therein described and referred to, for the sum of rupees.

2. He has applied to the said *C. D.* specifically to perform the said agreement on his part, but he has not done so.

3. The said *A. B.* has been and still is ready and willing specifically to perform the agreement on his part of which the said *C. D.* has had notice.

4. The plaintiff prays that the Court will order the said *C. D.* specifically to perform the said agreement and to do all acts necessary to put the said *A. B.* in full possession of the said property [*or* to accept a conveyance and possession of the said property] and to pay the costs of the suit.

[*N.B.—In suit for delivery up, to be cancelled, of any agreement, omit paragraphs 2 and 3, and substitute a paragraph stating generally the grounds for requiring the agreement to be delivered up to be cancelled—such as that the plaintiff signed it by mistake, under duress, or by the fraud of the defendant—and alter the prayer according to the relief sought.*]

THE FOURTH SCHEDULE—*continued.*

No. 112.

SPECIFIC PERFORMANCE. (No. 2.)

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. That on the day of 18 , the defendant was absolutely entitled to certain immoveable property described in the agreement hereto annexed.

2. That on the same day, the plaintiff and defendant entered into an agreement, under their hands, a copy of which is hereto annexed.

3. That on the day of 18 , the plaintiff tendered rupees to the defendant, and demanded a conveyance of the said property.

4. That on the day of 18 , the plaintiff again demanded such conveyance. [*Or*, That the defendant refused to convey the same to the plaintiff.]

5. That the defendant has not executed such conveyance.

6. That the plaintiff is still ready and willing to pay the purchase-money of the said property to the defendant.

The plaintiff prays judgment:

(1) that the defendant execute to the plaintiff a sufficient conveyance of the said property [*following the terms of the agreement*];

(2) for rupees compensation for withholding the same.

No. 113.

PARTNERSHIP.

(*Title.*)

A. B., the above-named plaintiff, states as follows :—

1. He and the said *C. D.*, the defendant, have been for the space of years [*or* months] last past carrying on business together at within the jurisdiction of this Court, under certain articles of partnership in writing, signed by them respectively, [*or*, under a certain deed sealed and executed by them respectively, *or*, under a verbal agreement between them, the said plaintiff and defendant].

2. Divers disputes and differences have arisen between the plaintiff and defendant as such partners, whereby it has become impossible to carry on the said business in partnership with advantage to the partners.

3. The plaintiff desires to have the said partnership dissolved, and he is ready and willing to bear his share of the debts and obligations of the partnership according to the terms of the said articles [*or* deed, *or* agreement].

4. The plaintiff prays the Court to decree a dissolution of the said partnership, and that the accounts of the said partnership-trading may be taken by the Court, and the assets thereof realized, and that each party may be ordered to pay into Court any balance due from him upon such partnership-account, and that the debts and liabilities of the said partnership may be paid and discharged, and that the costs of the suit may be paid, out of the partnership-assets, and that any balance remaining of such assets, after such payment and discharge, and the payment of the said costs, may be divided between the plaintiff and defendant, according to the terms of the said articles [*or* deed, *or* agreement], or that, if the said assets shall prove insufficient, he the plaintiff and the said defendant may be ordered to contribute in such proportions as shall be just to a fund to be raised for the payment and discharge of such debts, liabilities and costs. And to give such other relief as the Court shall think fit.

This plaint was filed by of , pleader for the plaintiff, [*or* by].

[*N. B.—In suits for winding-up of any partnership, omit the prayer for dissolution: but instead thereof insert a paragraph stating the fact of the partnership having been dissolved.*]

No. 114.

THE FOURTH SCHEDULE—*continued.*

No. 114.

FORMS OF CONCISE STATEMENTS.

[Code of Civil Procedure, section 58.]

The plaintiff's claim is	rs. for money lent [and interest].	Money lent.
The plaintiff's claim is price of goods sold, and for interest.	rs., whereof rs. is for the rs. for money lent, and rs.	Several demands.
The plaintiff's claim is	rs. for arrears of rent.	Rent.
The plaintiff's claim is *the case may be*].	rs. for arrears of salary as a clerk [*or, as*	Salary, &c.
The plaintiff's claim is	rs. for interest upon money lent.	Interest.
The plaintiff's claim is	rs. for a general average contribution.	General average.
The plaintiff's claim is	rs. for freight and demurrage.	Freight, &c.
The plaintiff's claim is ant as a banker.	rs. for money deposited with the defend-	Banker's balance.
The plaintiff's claim is rs, money expended] as a pleader.	rs. for fees for work done [and	Fees, &c., as pleader.
The plaintiff's claim is *acter—as* auctioneer, cotton-broker, &c].	rs. for commission earned as [*state char-*	Commission.
The plaintiff's claim is	rs. for medical attendances.	Medical attendance.
The plaintiff's claim is policies of insurance.	rs. for a return of premiums paid upon	Return of premium.
The plaintiff's claim is	rs. for the warehousing of goods.	Warehouse-rent.
The plaintiff's claim is	rs. for the carriage of goods by railway.	Carriage of goods.
The plaintiff's claim is	rs. for the use and occupation of a house.	Use and occupation of house.
The plaintiff's claim is	rs. for the hire of [furniture].	Hire of goods.
The plaintiff's claim is	rs. for work done as a [surveyor].	Work done.
The plaintiff's claim is	rs. for board and lodging.	Board and lodging
The plaintiff's claim is *X. Y.*	rs. for the [board, lodging and] tuition of	Schooling.
The plaintiff's claim is as pleader [*or* factor, *or* collector, *or &c.*] of the plaintiff.	rs. for money received by the defendant	Money received.
The plaintiff's claim is under colour of the office of	rs. for fees received by the defendant	Fees of office.
The plaintiff's claim is for the carriage of goods by railway.	rs. for a return of money overcharged	Money overpaid.
The plaintiff's claim is the defendant as	rs. for a return of fees overcharged by	
The plaintiff's claim is the defendant as stake-holder.	rs. for a return of money deposited with	Return of money by stake-holder.
The plaintiff's claim is as stake-holder, and become payable to plaintiff.	rs. for money entrusted to the defendant	Money won from stake-holder.
The plaintiff's claim is the defendant as agent of the plaintiff.	rs. for a return of money entrusted to	Money entrusted to agent.
The plaintiff's claim is the plaintiff by fraud.	rs. for a return of money obtained from	Money obtained by fraud.
The plaintiff's claim is defendant by mistake.	rs. for a return of money paid to the de-	Money paid by mistake.
The plaintiff's claim is defendant for [work to be done, *or*, work left undone; *or*, a bill to be taken up, *or*, a bill not taken up; *or, &c.*].	rs. for a return of money paid to the de-	Money paid for consideration which has failed.
The plaintiff's claim is sit upon shares to be allotted.	rs. for a return of money paid as a depo-	

The

THE FOURTH SCHEDULE—*continued.*

Money paid by surety for defendant.

The plaintiff's claim is rs. for money paid for the defendant as his surety.

Rent paid.

The plaintiff's claim is rs. for money paid for rent due by the defendant.

Money paid on accommodation-bill.

The plaintiff's claim is rs. upon a bill of exchange accepted [*or* indorsed] for the defendant's accommodation.

Contribution by surety.

The plaintiff's claim is rs. for a contribution in respect of money paid by the plaintiff as surety.

By co-debtor.

The plaintiff's claim is rs. for a contribution in respect of a joint debt of the plaintiff and the defendant, paid by the plaintiff.

Money paid for calls.

The plaintiff's claim is rs. for money paid for calls upon shares, against which the defendant was bound to indemnify the plaintiff

Money payable under award.

The plaintiff's claim is rs. for money payable under an award.

Life-policy.

The plaintiff's claim is rs. upon a policy of insurance upon the life of *X. Y.*, deceased.

Money-bond.

The plaintiff's claim is rs. upon a bond to secure payment of rs. and interest.

Foreign judgment.

The plaintiff's claim is rs. upon a judgment of the Court in [the Empire of Russia].

Bills of exchange, &c.

The plaintiff's claim is rs. upon a cheque drawn by the defendant.

The plaintiff's claim is rs. upon a bill of exchange accepted [*or* drawn, *or* indorsed] by the defendant.

The plaintiff's claim is rs. upon a promissory note made [*or* indorsed] by the defendant.

The plaintiff's claim is rs. against the defendant, *A. B.*, as acceptor, and against the defendant, *C. D.*, as drawer [*or* indorser] of a bill of exchange.

Surety.

The plaintiff's claim is rs. against the defendant as surety for the price of goods sold.

The plaintiff's claim is rs. against the defendant, *A. B.*, as principal, and against the defendant, *C. D.*, as surety, for the price of goods sold [*or* for arrears of rent, *or* for money lent, *or* for money received by the defendant, *A. B.*, as traveller for the plaintiff, *or*, *&c.*]

Calls.

The plaintiff's claim is rs. for calls upon shares.

Indorsement for Costs, &c.

[*Add to the above forms*] and rs. for costs; and if the amount claimed be paid to the plaintiff or his pleader within days [*or if the summons is to be served out of the jurisdiction, insert the time for appearance limited by the order*] from the service hereof, further proceedings will be stayed.

Damages and other Claims.

Agent, &c.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.

The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and rs. for arrears of wages].

The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.

The plaintiff's claim is for damages for breach of duty as factor [*or*, *&c.*,] of the plaintiff [and rs. for money received as factor, *or*, *&c.*]

Apprentices.

The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant [*or* plaintiff].

Arbitration.

The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*

Assault, &c.

The plaintiff's claim is for damages for assault [and false imprisonment, and for malicious prosecution].

The

THE FOURTH SCHEDULE—*continued.*

The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff, *C. D.* — By husband and wife.

The plaintiff's claim is for damages for assault by the defendant, *C. D.* — Against husband and wife.

The plaintiff's claim is for damages for injury by the defendant's negligence as pleader of the plaintiff. — Pleader.

The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same]. — Bailment.

The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same]. — Pledge.

The plaintiff's claim is for damages for negligence in the custody of furniture [*or*, a carriage] lent on hire, [and for wrongfullly, *&c.*]. — Hire.

The plaintiff's claim is for damages for wrongfully neglecting [*or* refusing] to pay the plaintiff's cheque. — Banker.

The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts. — Bill.

The plaintiff's claim is upon a bond conditioned not to carry on the trade of a . — Bond.

The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway. — Carrier.

The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.

The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.

The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*]. — Charter-party.

The plaintiff's claim is for return of household furniture, [*or, &c.*,] or their value, and for damages for detaining the same. — Claim for return of goods; damages.

The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c. — Damages for depriving of goods.

The plaintiff's claim is for damages for libel. — Defamation.

The plaintiff's claim is for damages for slander.

The plaintiff's claim is for damages for improperly distraining. — Wrongful distress.

[*This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular.*]

The plaintiff's claim is to recover possession of a house, No. in Street, or of a farm called Blackacre, situate in the of in the of . — Ejectment.

The plaintiff's claim is to establish his title to [*here describe property*] and to recover the rents thereof. — To establish title and recover rents.

[*The two previous Forms may be combined.*]

The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing. — Fishery.

The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [*or* a business, *or* shares, *or*, *&c.*]. — Fraud.

The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of *A. B.*

The plaintiff's claim is for damages for breach of a contract of guarantee for *A. B.* — Guarantee.

The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.

The plaintiff's claim is for a loss under a policy upon the ship [*Royal Charter*], and freight of cargo [*or* for return of premiums]. — Insurance.

[*This Form shall be sufficient whether the loss claimed be total or partial.*]

The

THE FOURTH SCHEDULE—*continued.*

Fire-insurance.

The plaintiff's claim is for a loss under a policy of fire-insurance upon house and furniture.

The plaintiff's claim is for damages for breach of a contract to insure a house.

Landlord and tenant.

The plaintiff's claim is for damages for breach of a contract to keep a house in repair.

The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.

Medical man.

The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.

Mischievous animal.

The plaintiff's claim is for damages for injury by the defendant's dog.

Negligence.

The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.

The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendant's railway by the negligence of the defendant's servants.

The plaintiff's claim is for damages for injury to the plaintiff at the defendant's railway-station from the defective condition of the station.

Act XIII of 1855.

The plaintiff's claim is as executor of *A. B.*, deceased, for damages for the death of the said *A. B.*, from injuries received while a passenger on the defendant's railway, by the negligence of the defendant's servants.

Promise of marriage.

The plaintiff's claim is for damages for breach of promise of marriage.

Sale of goods.

The plaintiff's claim is for damages for breach of contract to accept and pay for goods.

The plaintiff's claim is for damages for non-delivery [*or* short delivery, *or* defective quality, *or other breach of contract of sale*] of cotton [*or, &c.*].

The plaintiff's claim is for damages for breach of warranty of a horse.

Sale of land.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] land.

The plaintiff's claim is for damages for breach of a contract to let [*or* take] a house.

The plaintiff's claim is for damages for breach of a contract to sell [*or* purchase] the lease, with good-will, fixtures, and stock-in-trade of a public-house.

The plaintiff's claim is for damages for breach of covenant for title [*or* for quiet enjoyment, *or*, *&c.*] in a conveyance of land.

Trespass on land.

The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [*or* cutting his grass, *or* felling his timber, *or* pulling down his fences, *or* removing his gate, *or* using his road or path, *or* crossing his field, *or* depositing sand there, *or* carrying away gravel from thence, *or* carrying away stones from his river].

Support.

The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [*or* house, *or* mine].

Way.

The plaintiff's claim is for damages for wrongfully obstructing a way [public highway, *or* private way].

Water-course, &c.

The plaintiff's claim is for damages for wrongfully diverting [*or* obstructing, *or* polluting, *or* diverting water from] a water-course.

The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [*or* into the plaintiff's mine].

The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.

Pasture.

The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture.

[*This Form shall be sufficient whatever the nature of the right to pasture be.*]

The

THE FOURTH SCHEDULE—*continued.*

The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house. Light.

The plaintiff's claim is for damages for the infringement of the plaintiff's patent. Patent.

The plaintiff's claim is for damages for the infringement of the plaintiff's copyright. Copyright.

The plaintiff's claim is for damages for wrongfully using [*or* imitating] the plaintiff's trademark. Trademark.

The plaintiff's claim is for damages for breach of a contract to build a ship [*or* to repair a house, *&c.*]. Work.

The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.

The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [*or*, &c.] Nuisance.

The plaintiff's claim is for damages from nuisance by noise from the defendant's works [*or* stables *or*, *&c.*]

[*Add to indorsement*]:—and for an injunction. Injunction.

[*Add to indorsement where claim is to land, or to establish title, or both*]:—

and for mesne profits. Mesne profits.

and for an account of rents or arrears of rent. Arrears of rent.

and for breach of covenant for [repairs]. Breach of covenant.

1. *Creditor to administer Estate.*

The plaintiff's claim is as a creditor of *X. Y.*, of , deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the administrator of the said *X. Y.* [and the defendants, *E. F.* and *G. H.*, as his co-heirs at law].

2. *Legatee to administer Estate.*

The plaintiff's claim is as a legatee under the will dated the day of 18 , of *X. Y.*, deceased, to have the moveable and immoveable property of the said *X. Y.* administered. The defendant, *C. D.*, is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.*, as his devisees].

3. *Partnership.*

The plaintiff's claim is to have an account taken of the partnership-dealings between the plaintiff and defendant [under articles of partnership dated the day of], and to have the affairs of the partnership wound up.

4. *By Mortgagee.*

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the day of , made between [*parties*] [*or*, by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

5. *By Mortgagor.*

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated and made between [*parties*], and to redeem the property comprised therein.

6. *Raising*

THE FOURTH SCHEDULE—*continued.*

6. Raising Portions.

The plaintiff's claim is that the sum of rs. which by a deed of settlement, dated , was provided for the portions of the younger children of may be raised.

7. Execution of Trusts.

The plaintiff's claim is to have the trusts of an indenture dated and made between [*parties*] carried into execution.

8. Cancellation or Rectification.

The plaintiff's claim is to have a deed dated and made between [*parties*] set aside or rectified.

9. Specific Performance.

The plaintiff's claim is for specific performance of an agreement dated the day of for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at

---

No. 115.

PROBATE.

1. *By an executor or legatee propounding a will in solemn form.*

The plaintiff claims to be executor of the last will dated the day of of *C. D.*, late of , deceased, who died on the day of , and to have the said will established. This summons is issued against you as one of the next-of-kin of the said deceased [*or, as the case may be*].

2. *By an executor or legatee of a former will, or a next-of-kin, &c., of the deceased, seeking to obtain the revocation of a probate granted in common form.*

The plaintiff claims to be executor of the last will dated the day of of *C. D.*, late of , deceased, who died on the day of and to have the probate of a pretended will of the said deceased, dated the day of revoked. This summons is issued against you as the executor of the said pretended will [*or, as the case may be*].

3. *By an executor or legatee of a will when letters of administration have been granted as in an intestacy.*

The plaintiff claims to be executor of the last will of *C. D.*, late of , deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

4. *By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.*

The plaintiff claims to be the brother and sole next-of-kin of *C.D.*, of , deceased, who died on the day of , intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next-of-kin of the deceased [*or, as the case may be*].

F.—MISCELLANEOUS.

THE FOURTH SCHEDULE—*continued.*

F.—MISCELLANEOUS.
No. 116.
Section 58 of the Code of Civil Procedure.

COURT of the _____ of _____ holden at _____

REGISTER OF CIVIL SUITS in the year 18

Date of presentation of plaint.	No. of Suit.	Plaintiff.			Defendant.			Claim.			Appearance.			Judgment.			Appeal.		Execution.					Return of Execution.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Particulars.	Amount or value.	When the Cause of Action accrued.	Day for parties to appear.	Plaintiff.	Defendant.	Date.	For whom.	For what, or amount.	Date of appeal.	Judgment in Appeal.	Date of Application.	Date of Order.	Against whom.	For what, and amount if money.	Amount of costs.	Amount paid into Court.	Arrested.	Minute of other Return than Payment or Arrest, and date of every Return.

THE FOURTH SCHEDULE—*continued.*

No. 117.

SUMMONS FOR DISPOSAL OF SUIT.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

NOTICE—1. Should you apprehend your witnesses will not attend of their own accord, you can have summons from this Court to compel the attendance of any witness, and the production of any document that you have a right to call upon the witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

WHEREAS
has instituted a suit against you for
you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions on
the day of
18 , at o'clock in the forenoon, to answer the above-named plaintiff; and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day; and you are hereby required to take notice that, in default of your appearance on the day before-mentioned, the suit will be heard and determined in your absence; and you will bring with you, or send by your pleader
, which the plaintiff desires to inspect, and any documents on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this
day of 18 .

L. S.

Judge.

NOTE.—*If written statements are required, say*—You are [*or* such a party is, *as the case may be*] required to put in a written statement by the day of

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No. 118.

SUMMONS FOR SETTLEMENT OF ISSUES.

Sections 64 and 68 of the Code of Civil Procedure.

(*Title.*)

To

dwelling at

NOTICE.—1. Should you apprehend your witnesses will not attend of their own accord, you can have summonses from this Court to compel the attendance of any witness, and the production of any document that you have a right to call on the

WHEREAS
has instituted a suit against you for
you are hereby summoned to appear in this Court in person or by a duly authorized pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions, on

the

THE FOURTH SCHEDULE—*continued.*

witness to produce, on applying to the Court at any time before the trial, on your depositing their necessary subsistence-money.

2. If you admit the demand, you should pay the money into Court with the costs of the suit, to avoid the summary execution of the decree, which may be against your person or property, or both, if necessary.

the day of 18 , at o'clock in the forenoon, to answer the above-named plaintiff; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the issues will be settled in your absence; and you will bring with you, or send by your pleader , which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

NOTE.—*If written statements are required, say*—You are [or such a party is, *as the case may be*] required to put in a written statement by the day of

No. 119.

SUMMONS TO APPEAR.

Section 68 of the Code of Civil Procedure.

No. of Suit.

IN THE COURT OF AT

Plaintiff.
Defendant.

To

(*Name, description and address.*)

WHEREAS [*here enter the name, description and address of the plaintiff*] has instituted a suit in this Court against you [*here state the particulars of the claim as in the register*]: you are hereby summoned to appear in this Court in person on the day of at in the forenoon [*If not specially required to appear in person, state*—"in person or by a pleader of the Court, duly instructed, and able to answer all material questions relating to the suit, or who shall be accompanied by some other person able to answer all such questions"] to answer the above-named plaintiff. [*If the summons be for the final disposal of the suit, this further direction shall be added here;* "and as the day fixed for your appearance is appointed for the final disposal of the suit, you must be prepared to produce all your witnesses on that day"]; and you are hereby required to take notice that, in default of your appearance on the day before mentioned, the suit will be heard and determined in your absence; and you will bring with you (or send by your agent) [*here mention any document the production of which may be required by the plaintiff*], which the plaintiff desires to inspect, and any document on which you intend to rely in support of your defence.

GIVEN under my hand and the seal of the Court this day of 18 .

L. S.

Judge.

No. 120.

THE FOURTH SCHEDULE—*continued.*

No. 120.

ORDER FOR TRANSMISSION OF SUMMONS FOR SERVICE IN THE JURISDICTION OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

The day of 18 .

WHEREAS it is stated in the plaint that , the defendant in the above suit is at present residing in , but that the right to sue accrued within the jurisdiction of this Court: it is ordered that a summons returnable on the day of 18 be forwarded for service on the said defendant, to the Court of with a duplicate of this proceeding.

L. S.

Judge.

No. 121.

TO ACCOMPANY RETURN OF SUMMONS OF ANOTHER COURT.

Section 85 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

The day of 18 .

A. B. of
against
C. D. of

Read proceeding from the forwarding for service on civil No. of that Court.

Read bailiff's endorsement on the back of the process stating that the and proof of the above having been duly taken by me on the [oath *or*] affirmation of and it is ordered that the be returned to the with copy of this proceeding.

L. S.

Judge.

NOTE.—This form will be applicable to process other than summons, the service of which may have to be effected in the same manner.

No. 12

THE FOURTH SCHEDULE—*continued.*

No. 122.

DEFENDANT'S STATEMENT.

Section 110 of the Code of Civil Procedure.

(*Title.*)

I, the undersigned defendant [*or* one of the defendants], disclaim all interest under the will of the said *E. F.* in the plaint, named [*or*, as heir-at-law, *or*, as next-of-kin, *or* one of the next-of-kin, of *E. F.*, deceased, in the said plaint named].

Or, I, the undersigned defendant, state that I admit [*or* deny] [*here repeat in the language of the plaint the statements admitted or denied*].

Or, I, the undersigned defendant, submit that, upon the facts stated in the plaint, it does not appear that there is any agreement which can be legally enforced [*or*, that it appears upon the said plaint that I am jointly liable with one *E. F.*, who is not a party to the suit, and not severally liable as by the plaint appears, *or*, that it appears by the said plaint that *G. H.* should have been a joint-plaintiff with the said *A. B.* in the said suit, *or, as the case may be*].

Or, that the plaintiff has conveyed his interest in the said mortgage [*or* right to redeem] to one *I. J.* [*or*, that I have conveyed or assigned to *H. L.* by way of further charge for securing the sum of Rs. , the right to redeem in the property sought by the suit to be foreclosed].

Or, that since the dissolution of the partnership the plaintiff has executed an instrument, whereby the plaintiff covenants to discharge all debts and liabilities of the partnership, and generally to release me from all claims and liabilities either by or to himself and others in respect of the said partnership-trading [*or, as the case may be*].

(*Signed*) *C. D.*,
Defendant.

No. 123.

INTERROGATORIES.

Section 121 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A.B.

against

C. D., *E. F.* and *G. H.*

Interrogatories on behalf of the above-named *A. B.* [*or C. D.*] for the examination of the above-named [*E. F.* and *G. H.*, *or A. B.*]

1. Did not, &c.
2. Has not, &c.

The defendant *E. F.* is required to answer the interrogatories numbered .

The defendant *G. H.* is required to answer the interrogatories numbered .

THE FOURTH SCHEDULE—*continued.*

No. 124.

FORM OF NOTICE TO PRODUCE DOCUMENTS.

Section 131 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B.
against
C. D.

Take notice that the plaintiff [*or* defendant] requires you to produce for his inspection the following documents referred to in your plaint [*or* written statement, *or* affidavit], dated the day of 18 .

Describe documents required.

X. Y., Pleader for the plaintiff [*or* the defendant].

To *Z.*,
Pleader for the defendant [*or* plaintiff].

No. 125.

SUMMONS TO ATTEND AND GIVE EVIDENCE.

Sections 159 and 163 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS your attendance is required to on behalf of the in the above cause, you are hereby required [personally to appear before this Court] on the day of 18 , at the hour of A.M. [and] to bring with you or to send to this Court .

A sum of Rs. , being your travelling and other expenses and subsistence-allowance for one day is herewith sent. If you do not comply with this order, you will be subject to the consequence of non-attendance laid down in the Code of Civil Procedure, section 170.

Notice—(1). If you are summoned only to produce a document and not to give evidence, you shall be deemed to have complied with the summons if you cause such document to be produced in this Court on the day and hour aforesaid.

(2). If you are to be detained beyond the day aforesaid, a sum of Rs. will be tendered to you for each day's attendance beyond the day specified.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S

Judge.

No. 126.

Another Form.

No. of Suit.

IN THE COURT OF AT

Plaintiff.
Defendant.

To

[*Name, description and address.*]

YOU are hereby summoned to appear in this Court in person on the day

THE FOURTH SCHEDULE—*continued.*

day of at in the forenoon, to give evidence on behalf of the plaintiff [*or* the defendant] in the above-mentioned suit, and to produce [*here describe with convenient certainty any document the production of which may be required. If the summons be only to give evidence, or if it be only to produce a document, it must be expressed accordingly*], and you are not to depart thence until you have been examined [*or* have produced the document] and the Court has risen, or unless you have obtained the leave of the Court.

FORMS OF DECREES.

No. 127.

SIMPLE MONEY-DECREE.

(*Title.*)

Claim for

THIS cause coming on for final disposal before in the presence of , on the part of the plaintiff, and on the part of the defendant, it is ordered that the do pay to the the sum of Rs. ; with interest thereon at the rate of per cent. per from to the date of realization of the said sum, and do also pay to the the costs of this suit as taxed by the officer of the Court, with interest thereon at the rate aforesaid from the date of taxation to the date of realization.

Costs of suit.

PLAINTIFF.	Rs.	A.	P.	DEFENDANT.	Rs.	A.	P.
1. Stamp for plaint ...				Stamp for power ...			
2. Do. for power ...				Do. petition ...			
3. Do. exhibits ...				Pleader's fee			
4. Pleader's fees on Rs. ...				Subsistence for witnesses ...			
5. Translation-fee ...				Service of process ...			
6. Subsistence for witness for attendance				Translation-fee ...			
				Commissioner's fee ...			
7. Commissioner's fee ...							
8. Service of process ...							
9. &c.							
TOTAL ...				TOTAL ...			

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 128.

THE FOURTH SCHEDULE—*continued.*

No. 128.

DECREE FOR SALE IN A SUIT BY A MORTGAGEE OR PERSON ENTITLED TO A LIEN.

(*Title.*)

IT is ordered that it be referred to the Registrar [*or* Taxing Officer] to take an account of what is due to the plaintiff for principal and interest on the mortgage [*or* lien] mentioned in the plaint, and to tax the plaintiff's costs of this suit, and that the Registrar [*or* Taxing Officer] do declare in court on the day of what he shall find to be due for principal and interest as aforesaid, and for costs; And upon the defendant paying into Court what shall be certified to be due to the plaintiff for principal and interest as aforesaid, together with the said costs, within six months from the date of declaring in Court the amount so due; it is ordered that the plaintiff do re-convey the said mortgaged premises free and clear from all incumbrances done by him, or any claiming by, from, or under, him, and do deliver up to the defendant or to such person as he appoints all documents in his custody or power relating thereto, and that upon such re-conveyance being made, and documents being delivered up, the Registrar [*or* Taxing Officer] shall pay out to the plaintiff the said sum so paid in as aforesaid for principal, interest and costs; but in default of the defendant paying into Court such principal, interest and costs as aforesaid by the time aforesaid, then it is ordered that the said mortgaged premises [*or* the premises subject to the said lien] be sold with the approbation of the Registrar [*or* Taxing Officer]. And it is ordered that the proceeds of such sale (after defraying thereout the expenses of the sale) be paid into Court, to the end that the same may be duly applied in payment of what shall be found due to the plaintiff for principal, interest and costs as aforesaid, and that the balance (if any) shall be paid to the defendant or other person entitled to receive the same.

No. 129.

FINAL DECREE FOR FORECLOSURE.

(*Title.*)

WHEREAS it appears to the Court that the defendant has not paid into Court the sum which was on the day of last declared in Court to be due to the plaintiff for principal and interest upon the mortgage in the plaint mentioned, and for costs, pursuant to the order made in this suit on the day of last, and that the period of six months has elapsed since the said day of

It is ordered that the defendant do stand absolutely debarred of all right to redeem the said mortgaged premises.

No. 130.

PRELIMINARY ORDER—ADMINISTRATION-SUIT.

Section 213 of the Code of Civil Procedure.

(*Title.*)

IT is ordered that the following accounts and inquiries be taken and made; that is to say:—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased

In

THE FOURTH SCHEDULE—*continued.*

In suits by legatees—

2. An account be taken of the legacies given by the testator's will.

In suits by next-of-kin—

An inquiry be made and account taken of what, or of what share, if any, the plaintiff is entitled to as next-of-kin [*or* one of the next-of-kin] of the intestate.

[*After the first paragraph, the Order will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph, and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.*]

3. An account of the funeral and testamentary expenses.

4. An account of the moveable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.

5. An inquiry what part (if any) of the moveable property of the deceased is outstanding and undisposed of.

6. And it is further ordered, that the defendant do, on or before the day of next, pay into Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or to his use.

7. And that if the *Registrar* shall find it necessary for carrying out the objects of the suit to sell any part of the moveable property of the deceased, that the same be sold accordingly, and the proceeds paid into Court.

8. And that Mr. *E. F.* be Receiver in the suit [*or* proceeding], and receive and get in all outstanding debts and outstanding moveable property of the deceased, and pay the same into the hands of the Registrar [and shall give security by bond for the due performance of his duties to the amount of rupees].

9. And it is further ordered, that if the moveable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say,—

(*a*) an inquiry what immoveable property the deceased was seized of or entitled to at the time of his death;

(*b*) an inquiry what are the incumbrances (if any) affecting the immoveable property of the deceased, or any part thereof;

(*c*) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.

10. And that the immoveable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale, and subject to the incumbrances of such of them as shall not consent.

11. And it is ordered, that *G. H.* shall have the conduct of the sale of the immoveable property, and shall prepare the conditions and contracts of sale subject to the approval of the Registrar, and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.

12. And it is further ordered, that for the purpose of the inquiries hereinbefore directed, the Registrar shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the Registrar to give the most useful publicity to such inquiries.

13. And it is ordered, that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the Registrar do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

14. And, lastly, it is ordered, that this suit [*or* matter] stand adjourned for making final decree to the day of .

[*Such part only of this order is to be used as is applicable to the particular case.*]

No. 131.

THE FOURTH SCHEDULE—*continued.*

No. 131.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE.

Section 213 of the Code of Civil Procedure.

1. IT is ordered that the defendant do on or before the day of pay into Court the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator, and also the sum of Rs. for interest, at the rate of Rs. per centum per annum, from the day of to the day of amounting together to the sum of Rs. .

2. Let the Registrar [*or* Taxing Officer] of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(*a*)—The costs of the plaintiff to Mr. , his attorney [*or* pleader], and the costs of the defendant to Mr. , his attorney [*or* pleader].

(*b*)—And (*if any debts are due*) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid, let the sums found to be owing to the several creditors mentioned in the schedule to the Registrar's certificate, together with subsequent interest on such of the debts as bear interest, be paid; and after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES.

Section 213 of the Code of Civil Procedure.

1. Declare that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff;

2. And it is ordered, that an account be taken of what is due for principal and interest on the said legacy;

3. And it is also ordered, that the defendant do within weeks after the date of the Registrar's certificate, pay to the plaintiff the amount of what the Registrar shall certify to be due for principal and interest;

4. And it is ordered, that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT-OF-KIN.

Section 213 of the Code of Civil Procedure.

1. Let the Registrar of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said plaintiff's costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance by the said certificate found to be due from the said defendant on account of the personal estate of *E. F.*, the intestate, within one week after the taxation of the said costs by the said Registrar, and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered, that the residue of the said sum of Rs. , after payment of the plaintiff's and defendant's costs as aforesaid, be paid and applied by defendant as follows:—

(*a*)—Let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay one-third share of the said residue to the plaintiffs, *A. B.*, and *C.*, his wife, in her right, as the sister and one of the next-of-kin of the said *E. F.*, the intestate.

(*b*) Let

THE FOURTH SCHEDULE—*continued.*

(*b*)—Let the defendant retain for her own use one other third share of the said residue, as the mother, and one other of the next-of-kin of the said *E. F.*, the intestate.

(*c*)—And let the defendant, within one week after the taxation of the said costs by the Registrar as aforesaid, pay the remaining one-third share of the said residue to *G. H.*, as the brother and the other next-of-kin of the said *E. F.*, the intestate.

No. 132.

ORDER—DISSOLUTION OF PARTNERSHIP.

Section 215 of the Code of Civil Procedure.

(*Title.*)

IT is declared that the partnership in the plaint mentioned between the plaintiff and defendant ought to stand dissolved as from the day of , and it is ordered that the dissolution thereof as from that day be advertised in the *Gazette, &c.*

And it is ordered that be the Receiver of the partnership-estate and effects in this suit, and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken :—

1. An account of the credits, property and effects now belonging to the said partnership ;
2. An account of the debts and liabilities of the said partnership ;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned, and the stock-in-trade, be sold on the premises, and that the Registrar may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken and all the other acts required to be done be completed before the day of , and that the Registrar do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of .

And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of .

No. 133.

PARTNERSHIP—FINAL DECREE.

Section 215 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No.

A. B. of
against
C. D. of

IT is ordered that the fund now in Court, amounting to the sum of Rs. be applied as follows :—

1. In payment of the debts due by the partnership set forth in the Registrar's certificate, amounting in the whole to Rs. .
2. In payment of the costs of all parties in this suit, amounting to Rs. [*These costs must be ascertained before the decree is drawn up*].
3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[*Or,*

THE FOURTH SCHEDULE—*continued.*

[*Or*, And that the remainder of the said sum of Rs. be paid to the said plaintiff [*or* defendant] in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

And that the defendant [*or* plaintiff] do on or before the day of pay to the plaintiff [*or* defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 134.

CERTIFICATE OF NON-SATISFACTION OF DECREE.

Section 224 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

CERTIFIED that no [*or* partial, *as the case may be, and if partial, state to what extent*] satisfaction of the decree of this Court, in Civil Suit No. of 18 , a copy of which is hereunto attached, has been obtained by execution within the jurisdiction of this Court.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 135.

NOTICE TO SHOW CAUSE WHY EXECUTION SHOULD NOT ISSUE.

Section 248 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

Miscellaneous, No. of 18

A. B. of

against

To *C. D.* of

WHEREAS has made application to this Court for execution of decree in Civil Suit No. 18 , this is to give you notice that you are to appear before this Court on the day of 18 , either in person, or by a pleader of this Court, or agent duly authorized and instructed, to show cause, if any, why execution should not be granted.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 136.

THE FOURTH SCHEDULE—*continued.*

BENGAL SECRETARIAT LIBRARY

No. 136.

WARRANT OF ATTACHMENT OF MOVEABLE PROPERTY IN DEFENDANT'S POSSESSION IN EXECUTION OF A DECREE FOR MONEY.

Section 254 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS was ordered, by decree of this Court, passed on the day of 18 , in Suit No. of 18 , to pay to the plaintiff the sum of Rs. as noted in the margin; and whereas the said sum of Rs. has not been paid.

DECREE.			
Principal			
Interest			
Costs			
Costs of decree . . .			
Interest thereon . .			
Total of attachment . .			
TOTAL .			

THESE ARE TO COMMAND YOU to attach the moveable property of the said as set forth in the list hereunto annexed, or which shall be pointed out to you by the said , and unless the said shall pay to you the said sum of Rs. , together with Rs. the costs of this attachment, to hold the same until further orders from this Court.

YOU ARE FURTHER COMMANDED to return this Warrant on or before the day of 18 , with an endorsement certifying the date and manner in which it has been executed, or why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 137.

WARRANT TO THE BAILIFF TO GIVE POSSESSION OF LAND, &C.

Section 263 of the Code of Civil Procedure.

(*Title.*)

TO THE BAILIFF OF THE COURT.

WHEREAS in the occupancy of has been decreed to , the plaintiff in this suit: you are hereby directed to put the said in possession of the same, and you are hereby authorized to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 138.

THE FOURTH SCHEDULE—*continued.*

No. 138.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSON TO THE IMMEDIATE POSSESSION THEREOF.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 18 in favour of for Rs. : it is ordered that the defendant be, and is hereby, prohibited and restrained, until the further order of this Court, from receiving from the following property in the possession of the said that is to say, to which the defendant is entitled, subject to any claim of the said . , and the said is hereby prohibited and restrained, until the further order of this Court, from delivering the said property to any person or persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 139.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF DEBTS NOT SECURED BY NEGOTIABLE INSTRUMENTS.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS

has failed to satisfy a decree passed against on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that the defendant be, and hereby, prohibited and restrained, until the further order of this Court, from receiving from you a certain debt alleged now to be due from you to the said defendant, namely, and that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from making payment of the said debt, or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 140.

THE FOURTH SCHEDULE—*continued.*

No. 140.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &c.

Section 268 of the Code of Civil Procedure.

(*Title.*)

To

Defendant, and

to , Manager of

Company.

WHEREAS

has failed to satisfy a decree passed against

on the day of 18 , in Civil Suit, No. of 18 in favour of for Rs. : it is ordered that you, the defendant, be, and you are hereby, prohibited and restrained, until the further order of this Court, from making any transfer of

shares in the aforesaid Company, namely,

or from receiving payment of any dividends thereof; and you , the Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 141.

ATTACHMENT IN EXECUTION.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 274 of the Code of Civil Procedure.

(*Title.*)

To

Defendant.

WHEREAS you have failed to satisfy a decree passed against you on the day of 18 , in Civil Suit, No. of 18 , in favour of for Rs. : it is ordered that you, the said , be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift, or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift, or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 142.

THE FOURTH SCHEDULE—*continued.*

No. 142.

ATTACHMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY OR OF ANY SECURITY IN THE HANDS OF A COURT OF JUSTICE OR OFFICER OF GOVERNMENT.

Sections 272 and 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

SIR,

THE plaintiff having applied, under section of the Code of Civil Procedure, for an attachment of certain money now in your hands (*here state how the money is supposed to be in the hands of the person addressed, on what account, &c.*), I request that you will hold the said money subject to the further order of this Court.

I have the honour to be,

SIR,

Your most obedient Servant,

L. S.

Dated the day of 18 . *Judge.*

No. 143.

ORDER FOR PAYMENT TO THE PLAINTIFF, &C., OF MONEY, &C., IN THE HANDS OF A THIRD PARTY.

Section 277 of the Code of Civil Procedure.

IN THE COURT OF AT .

Civil Suit, No. of 18 .

Miscellaneous, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT AND TO

WHEREAS the following property has been attached in execution of a decree in Civil Suit, No. of 18 , passed on the day of 18 , in favour of for Rs. : it is ordered that the property so attached, consisting of Rs. in money, and Rs. in Currency-notes, or a sufficient part thereof to satisfy the said decree, shall be paid over by you the said , to , and that the said property, so far as may be necessary for the satisfaction of the said decree, shall be sold by you, the Bailiff of the Court, by public auction in the manner prescribed for sale in execution of decrees, and that

THE FOURTH SCHEDULE—*continued.*

that the money which may be realized by such sale, or a sufficient part thereof to satisfy the said decree, shall be paid over to the said
and the remainder, if any, shall be paid to you, the said

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 144.

NOTICE TO ATTACHING CREDITOR.

Section 278 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18
Miscellaneous, No. of 18

A. B. of
against
C. D. of

To

WHEREAS has made application to this Court for the removal of attachment on placed at your instance in execution of the decree in Civil Suit, No. of 18 , this is to give you notice to appear before this Court on , the day of , 18 , either in person or by a pleader of the Court duly instructed, to support your claim, as attaching creditor.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 145.

WARRANT OF SALE OF PROPERTY IN EXECUTION OF A DECREE FOR MONEY.

Section 287 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18
Miscellaneous, No. of 18

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

THESE ARE TO COMMAND YOU to sell by auction, after giving days' previous notice, by affixing the same in this court-house, and after making due proclamation,

THE FOURTH SCHEDULE—*continued.*

proclamation,* the
property attached under a warrant from this Court dated the
day of 18 , in execution of a decree in favour of
in suit No. of 18 , or so much of the said property as shall realize the sum of Rs. , being the of the said decree and costs still remaining unsatisfied.

YOU ARE FURTHER COMMANDED to return this warrant on or before the day of 18 , with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

* This proclamation shall specify the time, the place of sale, the property to be sold, the revenue assessed, should the property consist of land paying revenue to Government, and the amount for the recovery of which the sale is ordered, and as fairly and accurately as possible the other particulars required by section 287 to be specified.

No. 146.

NOTICE TO PERSON IN POSSESSION OF MOVEABLE PROPERTY SOLD IN EXECUTION.

Section 300 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of
against
C. D. of

To

WHEREAS
has been the purchaser at a sale by auction in execution of the decree in the above suit of now in your possession, you are hereby prohibited from delivering possession of the said to any person except the said

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 147

THE FOURTH SCHEDULE—*continued.*

No. 147.

PROHIBITORY ORDER AGAINST PAYMENT OF DEBTS SOLD IN EXECUTION TO ANY OTHER THAN THE PURCHASER.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of .

To

and to

WHEREAS

has become the purchaser at a public sale in execution of the decree in the above suit of certain debt due from you to you , that is to say , it is ordered that you be, and you are hereby, prohibited from receiving, and you from making payment of, the said debt to any person or persons except the said .

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 148.

PROHIBITORY ORDER AGAINST THE TRANSFER OF SHARES SOLD IN EXECUTION.

Section 301 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No of 18 .

A. B. of

against

C. D. of

To

and Manager of Company.

WHEREAS has become the purchaser at a public sale in execution of the decree, in the above suit of certain shares in the above Company, that is to say, of standing in the name of you , it is ordered that you be, and you are hereby, prohibited from making any transfer of the said shares to any person except the said the purchaser aforesaid, or from receiving any dividends thereon; and you , Manager of the said Company, from permitting any such transfer or making any such payment to any person except the said , the purchaser aforesaid.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 149.

THE FOURTH SCHEDULE—*continued.*

No. 149.

ORDER CONFIRMING SALE OF LAND, &c.

Section 312 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B of

against

C. D. of

WHEREAS the following land [*or* immoveable property] was on the day of 18 sold by the Bailiff of this Court in execution of the decree in this suit; and whereas days have elapsed and no application has been made [*or* objection allowed] to the said sale, it is ordered that the said sale be, and the said sale is hereby, confirmed.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L S.

Judge.

No. 150.

CERTIFICATE OF SALE OF LAND.

Section 316 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

THIS is to certify that has been declared the purchaser at sale by public auction on the day of 18 of in execution of decree in this suit, and that the said sale has been duly confirmed by the Court.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

No. 151.

THE FOURTH SCHEDULE—*continued.*

No. 151.

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION.

Section 318 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS has become the certified purchaser of at a sale in execution of the decree in Civil Suit, No. of 18 ; and whereas such land is in the possession of , you are hereby ordered to put the said the certified purchaser, as aforesaid, into possession of the said and if need be, to remove any person who may refuse to vacate the same.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 152.

AUTHORITY TO THE COLLECTOR TO STAY PUBLIC SALE OF LAND.

Section 326 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of
against
C. D. of

To

Collector of

SIR,

In answer to your communication No. , dated , representing that the sale in execution of the decree in this suit of and, lying within your district, paying revenue to Government, is objectionable, I have the honour to inform you that you are authorized to make provision for the satisfaction of the said decree in the manner recommended by you instead of proceeding to a public sale of .

I have the honour to be,
SIR,
Your obedient Servant.

L. S.

Judge.

No. 153

THE FOURTH SCHEDULE—*continued.*

No. 153.

ORDER FOR COMMITTAL FOR RESISTING, &c., EXECUTION OF DECREE FOR LAND.

Section 329 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS it appears to the Court that has without just cause resisted [*or* obstructed] the execution of the decree of the Court passed against on the day of 18 , in Civil Suit, No. of 18 , whereby certain land or immoveable property was adjudged to , it is ordered that the said be committed to custody for a period of days.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 154.

WARRANT OF ARREST IN EXECUTION.

Section 337 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
Miscellaneous, No. of 18 .

A. B. of
against
C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS was adjudged by a decree of the Court, in No. of 18 , dated 18 , to pay to the plaintiff the sum of Rs. as noted in the margin, and whereas the said sum of Rs. has not been paid to the said plaintiff in satisfaction of the said decree, these are to command you to arrest the said defendant, and unless the said defendant shall pay to you the said sum of Rs. , together with Rs. for the costs of executing this process, to bring the said defendant before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 18 , with an endorsement certifying the day and manner in which it has been executed, or the reason why it has not been executed.

Principal			
Interest			
Costs			
Execution			
TOTAL .			

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 155.

THE FOURTH SCHEDULE—*continued.*

No. 155.

NOTICE OF PAYMENT INTO COURT.

Section 377 of the Code of Civil Procedure.

IN THE COURT OF

B. No. 18 .

A. B. v. *C. D.*

TAKE notice that the defendant has paid into Court Rs. , and says that that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim for, *&c.*]

To Mr. *X. Z.*,
the Plaintiff's Pleader .
Z.,
Defendant's Pleader.

No. 156.

COMMISSION TO EXAMINE ABSENT WITNESSES.

Section 386 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .
A. B. of
against
C. D. of

To

WHEREAS the evidence of is required by the in the above suit; and whereas you are requested to take the examination on interrogatories [*or* vivâ voce] of such witnesses and you are hereby appointed a Commissioner for that purpose, and you are further requested to make return of such examination so soon as it may be taken [process to require the attendance of the witness will be issued by this Court on your application].*

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

* Not necessary where the commission goes to another Court.

No. 157.

COMMISSION FOR A LOCAL INVESTIGATION, OR TO EXAMINE ACCOUNTS.

Sections 392 and 394 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18
A. B. of
against
C. D. of

To

WHEREAS it is deemed requisite, for the purposes of this suit, that a commission for should be issued; you are hereby appointed Commissioner for the purpose of [process to compel

THE FOURTH SCHEDULE—*continued.*

compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application.]*

A sum of Rs. , being your fee in the above, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18

L. S.

Judge.

* Not necessary where the commission goes to another Court.

No. 158.

WARRANT OF ARREST BEFORE JUDGMENT.

Section 478 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in the above suit, has proved to the satisfaction of the Court that there is probable cause for believing that the defendant is about to , these are to command you to take the said into custody, and to bring before the Court, in order that he may show cause why he should not furnish security to the amount of rupees for personal appearance before the Court, until such time as the said suit shall be fully and finally disposed of, and until execution or satisfaction of any decree that may be passed against in the suit.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 159.

ORDER FOR COMMITTAL.

Section 481 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

WHEREAS , plaintiff in this suit, has made application to the Court that security be taken for the appearance of the

defendant

THE FOURTH SCHEDULE—*continued.*

defendant to answer any judgment that may be passed against in the suit; and whereas the Court has called upon the defendant to furnish such security, or to offer a sufficient deposit in lieu of security, which has failed to do; it is ordered that the said defendant be committed to custody until the decision of the suit; or if judgment be given against , until the execution of the decree.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 160.

ATTACHMENT BEFORE JUDGMENT, WITH ORDER TO CALL FOR SECURITY FOR FULFILMENT OF DECREE.

Section 484 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of
against
C. D. of .

TO THE BAILIFF OF THE COURT.

WHEREAS has proved to the satisfaction of the Court that the defendant in the above suit these are to command you to call upon the said defendant on or before the day of either to furnish security for the sum of rupees to produce and place at the disposal of this Court when required or the value thereof, or such portion of the value as may be sufficient to fulfil any decree that may be passed against , or to appear and show cause why should not furnish security; and you are further ordered to attach the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to the Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 161.

THE FOURTH SCHEDULE—*continued.*

No. 161.

ATTACHMENT BEFORE JUDGMENT, ON PROOF OF FAILURE TO FURNISH SECURITY.

Section 485 of the Code of Civil Procedure.

IN THE COURT OF AT

CIVIL SUIT, No. of 18 .

A. B. of

against

C. D. of

TO THE BAILIFF OF THE COURT.

WHEREAS , the plaintiff in this suit, has applied to the Court to call upon , the defendant, to furnish security to fulfil any decree that may be passed against in the suit, and whereas the Court has called upon the said to furnish such security which has failed to do ; these are to command you to attach the property of the said and keep the same under safe and secure custody until the further order of the Court, and in what manner you shall have executed this warrant make appear to this Court immediately after the execution hereof, and have you here then this warrant.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 162.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY TO BE ATTACHED CONSISTS OF MOVEABLE PROPERTY, TO WHICH THE DEFENDANT IS ENTITLED, SUBJECT TO A LIEN OR RIGHT OF SOME OTHER PERSONS TO THE IMMEDIATE POSSESSION THEREOF.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

Defendant.

IT is ordered that you the said be, and you are hereby, prohibited and restrained until the further order of this Court from receiving from the following property in the possession of the said that is to say to which the defendant is entitled, subject to any claim of the said and the said is hereby prohibited and

THE FOURTH SCHEDULE—*continued.*

and restrained, until the further order of this Court, from delivering the said property to any persons whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 163.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF IMMOVEABLE PROPERTY.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

Defendant.

IT is ordered that you the said be, and you are hereby, prohibited and restrained, until the further order of this Court, from alienating the property specified in the schedule hereunto annexed, by sale, gift or otherwise, and that all persons be, and that they are hereby, prohibited from receiving the same by purchase, gift or otherwise.

GIVEN under my hand and the seal of the Court, this day of 18 .

Schedule.

L. S.

Judge.

No. 164.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF MONEY IN THE HANDS OF OTHER PERSONS, OR OF DEBTS NOT BEING NEGOTIABLE INSTRUMENTS.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18

A. B. of

against

C. D. of

To

IT is ordered that the defendant be, and he is hereby, prohibited and restrained, until the further order of this Court, from receiving from the [money now in hands

belonging

THE FOURTH SCHEDULE—*continued.*

belonging to the said defendant *or* debts, *as the case may be, describing them*] and that the said be, and hereby prohibited and restrained, until the further order of this Court, from making payment of the said [money, &c.], or any part thereof, to any person whomsoever.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 165.

ATTACHMENT BEFORE JUDGMENT.

PROHIBITORY ORDER, WHERE THE PROPERTY CONSISTS OF SHARES IN A PUBLIC COMPANY, &C.

Section 486 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To Defendant and to

Manager of Company.

IT is ordered that

, the defendant, be, and hereby, prohibited and restrained, until the further order of the Court, from making any transfer of shares being in the aforesaid Company, or from receiving payment of any dividends thereof, and you Manager of the said Company, are hereby prohibited and restrained from permitting any such transfer, or making any such payment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 166.

TEMPORARY INJUNCTIONS.

Section 492 of the Code of Civil Procedure.

UPON motion made unto this Court by , Pleader of [*or* Counsel for] the plaintiff, *A. B.*, and upon reading the petition of the said plaintiff in this matter filed [this

THE FOURTH SCHEDULE—*continued.*

[this day] [*or* the plaint filed in this cause on the day of , *or* the written statement of the said plaintiff filed on the day of] and upon hearing the evidence of and in support thereof, [*if after notice and defendant not appearing: add*, and also the evidence of as to service of notice of this motion upon the defendant, *C. D.*]. This Court doth order that an injunction be awarded to restrain the defendant, *C. D.*, his servants, workmen and agents from pulling down, or suffering to be pulled down, the house in the plaint in the said suit of the plaintiff mentioned [*or* in the written statement, *or* petition, of the plaintiff and evidence at the hearing of this motion mentioned] being No. 9, Oilmongers Street, Hindúpur, in the Taluq of and from selling the materials whereof the said house is composed, until the hearing of this cause or until the further order of this Court.

Dated this day of 18 .

Civil Judge.

[*Where the injunction is sought to restrain the negotiation of a note or bill, the ordering part of the order may run thus:—*] to restrain the defendants and from parting with out of the custody of them or any of them or endorsing, assigning or negotiating the promissory note [*or* bill of exchange] in question, dated on or about the , *&c.*, mentioned in the plaintiff's plaint [*or* petition] and the evidence heard at this motion until the hearing of this cause, or until the further order of this Court.

[*In Copyright cases*] to restrain the defendant, *C. D.*, his servants, agents or workmen from printing, publishing, or vending a book, called , or any part thereof, until the, *&c.*

[*Where part only of a book is to be restrained*] to restrain the defendant, *C. D.*, his servants, agents or workmen from printing, publishing, selling, or otherwise disposing of such parts of the book in the plaint [*or* petition and evidence, *&c.*,] mentioned to have been published by the defendant as hereinafter specified, namely, that part of the said book which is entitled and also that part which is entitled [*or* which is contained in page to page both inclusive] until the , *&c.*

[*In Patent cases*] to restrain the defendant, *C. D.*, his agents, servants and workmen, from making or vending any perforated bricks (*or as the case may be*) upon the principle of the inventions in the plaintiff's plaint [*or* petition, *&c.*, *or* written statement, *&c.*,] mentioned, belonging to the plaintiffs, or either of them, during the remainder of the respective terms of the patents in the plaintiff's plaint [*or as the case may be*] mentioned, and from counterfeiting, imitating or resembling the same inventions, or either of them, or making any addition thereto, or subtraction therefrom, until the hearing &c.

[*In cases of Trade-marks*] to restrain the defendant, *C. D.*, his servants, agents or workmen, from selling, or exposing for sale, or procuring to be sold, any composition or blacking [*or, as the case may be*] described as or purporting to be blacking manufactured by the plaintiff, *A. B.*, in bottles having affixed thereto such labels as in the plaintiff's plaint [*or* petition, *&c.*] mentioned, or any other labels so contrived or expressed as, by colourable imitation or otherwise, to represent the composition or blacking sold by the defendant to be the same as the composition or blacking manufactured and sold by the plaintiff, *A. B.*, and from using trade-cards so contrived or expressed as to represent that any composition or blacking sold or proposed to be sold by the defendant is the same as the composition or blacking manufactured or sold by the plaintiff, *A. B.*, until the &c.

[*To restrain a partner from in any way interfering in the business*] to restrain the defendant, *C. D.*, his agents and servants, from entering into any contract, and from accepting, drawing, endorsing or negotiating any bill of exchange, note or written security, in the name of the partnership-firm of *B. & D.*, and

THE FOURTH SCHEDULE—*continued.*

and from contracting any debt, buying and selling any goods, and from making or entering into any verbal or written promise, agreement or undertaking, and from doing or causing to be done, any act, in the name or on the credit of the said partnership-firm of *B.* & *D.*, or whereby the said partnership-firm can or may in any manner become or be made liable to or for the payment of any sum of money, or for the performance of any contract, promise or undertaking, until the &c.

No. 167.

NOTICE OF APPLICATION FOR INJUNCTION.

Section 494 of the Code of Civil Procedure.

IN THE COURT OF AT

A. B. of

against

C. D. of

TAKE notice that I, *A. B.*, intend to apply at the sitting of the Court at aforesaid, on the day of for an injunction to restrain *C. D.* from further prosecuting a suit which he has commenced against me in , to recover damages for the breach of the contract for the specific performance of which this suit was commenced [*or* to restrain him from receiving and giving discharges for any of the debts due to the partnership in the matter of the partnership between us for the winding-up of which the suit was commenced, *or* from digging the turf from the land which was agreed to be sold by him to me by the agreement, the specific performance of which this suit is commenced to enforce, *or, as the case may be*].

Dated this day of 18 .

To C. D.

A. B.

[*N. B.—Where the injunction is to be applied for against a party whose name and address do not appear upon any proceeding already filed in the suit, such name and address must be stated in full to enable the proper officer to serve the notice.*]

No. 168.

APPOINTMENT OF A RECEIVER.

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of 18 .

A. B. of

against

C. D. of

To

WHEREAS has been attached in execution of a decree passed in the above suit on the day of 18 , in favour of : you are hereby (subject to your giving security to the satisfaction of the *Registrar*) appointed Receiver of the said property under section 503 of the Code of Civil Procedure, with full powers under the provisions of that section.

YOU are required to render a due and proper account of your receipts and disbursements in respect of the said property on . You will be entitled to remuneration at

THE FOURTH SCHEDULE—*continued.*

at the rate of per cent. upon your receipts under the authority of this appointment.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 169.

BOND TO BE GIVEN BY RECEIVER

Section 503 of the Code of Civil Procedure.

IN THE COURT OF AT

Civil Suit, No. of

A. B. of

against

C. D. of

KNOW all men by these presents, that we, *I J.* of &c., and *K. L.* of &c., and *M. N.* of &c., are jointly and severally bound to *G. H., Registrâr* of the Court of in Rs. , to be paid to the said *G. H.* or his attorney, executors, administrators or assigns. For which payment to be made we bind ourselves, and each of us, in the whole, our and each of our heirs, executors and administrators, jointly and severally, by these presents.

Dated this day of 18 .

And whereas a plaint has been filed in this Court by *A. B.* against *C. D.* for the purpose of [*here insert object of suit*].

And whereas the said *I. J.* has been appointed, by order of the above-mentioned Court, to receive the rents and profits of the immoveable property, and to get in the outstanding moveable property of *O. P.*, the testator in the said plaint named.

Now the condition of this obligation is such, that if the above-bounden *I. J.* shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the immoveable property, and in respect of the moveable property of the said *O. P.* [*or, as may be*] at such periods as the said Court shall appoint, and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court hath directed or shall hereafter direct, then this obligation shall be void, otherwise it shall remain in full force.

I. J.
K. L.
M. N.

Signed and delivered by the above-bounden in the presence of

NOTE.—*If deposit of money be made, the memorandum thereof should follow the terms of the condition of the bond.*

No. 170

ORDER OF REFERENCE TO ARBITRATION UNDER AGREEMENT OF PARTIES.

Section 508 of the Code of Civil Procedure.

(*Title.*)

To

WHEREAS the above-mentioned plaintiff and defendant have agreed to refer the matters in difference between them in the above suit to your arbitration and award, you are hereby appointed

THE FOURTH SCHEDULE—*continued.*

appointed accordingly to determine all the said matters in difference between the parties, and with power, by consent of the parties, to determine which party shall pay the costs of this reference.

You are required to deliver your award in writing to this Court on or before the day of 18 , or such other day as this Court may further fix.

Process to compel the attendance before you of any witnesses, or for the production of any documents which you may desire to examine or inspect, will be issued by this Court on your application, and you are empowered to administer to such witnesses oath or affirmation.

A sum of Rs. , being your fee in the above suit, is herewith forwarded.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 171.

ORDER OF REFERENCE TO ARBITRATION BY COURT, WITH CONSENT.

Section 508 of the Code of Civil Procedure.

(*Title.*)

UPON reading a petition of the plaintiff, filed this day, and on the consent of for the defendant, and upon hearing for the plaintiff and for the defendant, it is ordered, by and with the consent of all the parties, that all matters in difference in this suit, including all dealings and transactions between all parties, be referred to the final determination of , who is to make his award in writing and submit the same to this Court, together with all proceedings, depositions and exhibits in this suit, within one month from the date hereof. And it is ordered further, by and with the like consent, that the said arbitrator is to be at liberty to examine the parties and their witnesses upon oath or affirmation, which he is empowered to administer, and that the said arbitrator shall have all such powers or authorities as are vested in arbitrators under the Code of Civil Procedure, including therein power to call for all books of account that he may consider necessary. And it is further ordered, by and with the like consent, that the costs of this suit, together with the costs of reference to arbitration, up to and including the award of the said arbitrator, and the enforcement thereof, do abide the result of the finding of the said arbitrator. And it is further ordered, by and with the like consent, that the said arbitrator be at liberty to appoint a competent accountant to assist him in the investigation of the several matters referred to him as aforesaid, and that the remuneration of such accountant and other charges attending thereto be in the discretion of the said arbitrator.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge

No. 172.

THE FOURTH SCHEDULE—*continued.*

No. 172.

SUMMONS IN SUMMARY SUIT ON NEGOTIABLE INSTRUMENT.

Section 532 of the Code of Civil Procedure.

No. OF SUIT.

IN THE COURT OF AT

Plaintiff.

To Defendant.

[*Here enter the defendant's name, description and address.*]

WHEREAS [*here enter the plaintiff's name, description and address*] has instituted a suit in this Court against you under chapter XXXIX of the Code of Civil Procedure for Rs. principal and interest [*or* Rs. balance of principal and interest] due to him as the payee [*or* endorsee] of a bill of exchange [*or* hundí *or* promissory note], of which a copy is hereto annexed, you are hereby summoned to obtain leave from the Court within ten days from the service hereof, inclusive of the day of such service, to appear and defend the suit, and within such time to cause an appearance to be entered for you. In default whereof the plaintiff will be entitled at any time after the expiration of such ten days to obtain a decree for any sum not exceeding the sum of Rs. [*here state the sum claimed*] and the sum of Rs. for costs.

Leave to appear may be obtained on an application to the Court supported by affidavit or declaration showing that there is a defence to the suit on the merits, or that it is reasonable that you should be allowed to appear in the suit.

[*Here copy the bill of exchange, hundí or promissory note, and all endorsements upon it.*]

No. 173.

MEMORANDUM OF APPEAL.

Section 541 of the Code of Civil Procedure.

MEMORANDUM OF APPEAL.

(*Name, &c., as in Register.*) Plaintiff—Appellant.

(*Name, &c., as in Register.*) Defendant—Respondent.

[*Name of Appellant*] [plaintiff *or* defendant] above-named appeals to the High Court at [*or* District Court at , *as the case may be*] against the decree of in the above suit dated the day of , for the following reasons, namely, [*here state the grounds of objection.*]

THE FOURTH SCHEDULE—*continued.*

No. 174.

Register of Appeals.

Section 548 of the Code of Civil Procedure.

COURT (*OR* HIGH COURT) AT

Register of Appeals from Decrees in the year 18

Date of Memorandum.	No. of Appeal.	Appellant.			Respondent.			Decree appealed from.				Appearance.			Judgment.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what or Amount.

No. 175.

THE FOURTH SCHEDULE—*continued.*

No. 175.

NOTICE TO RESPONDENT OF THE DAY FIXED FOR THE HEARING OF THE APPEAL.

Section 553 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant*, v. , *Respondent.*

APPEAL from the of the Court of dated the day of 18 .

Respondent.

To

TAKE notice that an appeal from the decree of in this case has been presented by and registered in this Court, and that the day of 18 has been fixed by this Court for the hearing of this appeal.

If no appearance is made on your behalf by yourself, your pleader, or by some one by law authorized to act for you in this appeal, it will be heard and decided *ex parte* in your absence.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

[NOTE.—*If a stay of execution has been ordered, intimation should be given of the fact on this notice.*]

No. 176.

DECREE ON APPEAL.

Section 579 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Appellant*, v. , *Respondent.*

APPEAL from the of the Court of dated the day of 18 .

Memorandum of Appeal.

, *Plaintiff.*
, *Defendant.*

Plaintiff [*or* defendant] above-named appeals to the Court at against the decree of in the above suit, dated the day of 18 , for the following reasons, namely;

[*here state the reasons*]

This appeal coming on for hearing on the day of 18 before , in the presence of for the Appellant, and of for the Respondent, it is ordered—

[*here state the relief granted*]

The costs of this appeal, amounting to , are to be paid by The costs of the original suit are to be paid by

GIVEN under my hand, this day of

L. S.

Judge.

No. 177.

THE FOURTH SCHEDULE—*continued.*

No. 177.

REGISTER OF APPEALS FROM APPELLATE DECREES.

Section 587 of the Code of Civil Procedure.

HIGH COURT AT

REGISTER OF APPEALS FROM APPELLATE DECREES.

Date of Memorandum.	No. of Appeal.	APPELLANT.			RESPONDENT.			DECREE APPEALED FROM.				APPEARANCE.			JUDGMENT.		
		Name.	Description.	Place of abode.	Name.	Description.	Place of abode.	Of what Court.	No. of Original Suit and of Appeal.	Particulars.	Amount or Value.	Day for parties to appear.	Appellant.	Respondent.	Date.	Confirmed, reversed or altered.	For what or Amount.

THE FOURTH SCHEDULE—*concluded.*

No. 178.

NOTICE TO SHOW CAUSE WHY A REVIEW SHOULD NOT BE GRANTED.

Section 626 of the Code of Civil Procedure.

IN THE COURT OF AT

, *Plaintiff*, v. , *Defendant.*

To

TAKE notice that has applied to this Court for a review of its judgment passed on the day of 18 in the above case. The day of 18 is fixed for you to show cause why the Court should not grant a review of its judgment in this case.

GIVEN under my hand and the seal of the Court, this day of 18 .

L. S.

Judge.

No. 179.

NOTICE OF CHANGE OF PLEADER.

IN THE COURT OF AT

A. B. of

against

C. D. of

TO THE REGISTRAR OF THE COURT.

TAKE notice that I, *A. B.* [*or C. D.*], have hitherto employed as my pleader *G. H.* of in the above-mentioned cause, but that I have ceased to employ him, and that my present pleader is *J. K.* of .

A. B. [*or C. D.*]

No. 180.

MEMORANDUM TO BE PLACED AT FOOT OF EVERY SUMMONS, NOTICE, DECREE OR ORDER OF COURT, OR ANY OTHER PROCESS OF THE COURT.

Hours of attendance at the office of the Registrar [*place of office*] from *ten* till *four* except on [*here insert the day on which the office will be closed*], when the office will be closed at *one*.

Government of India, Central Printing Office.—No. 823 L. D.—20-5-82.—5,000.

THE PRESIDENCY SMALL CAUSE COURTS ACT, 1882.

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[*Price nine annas.*]

CHAPTER IV.

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ACT No. XV OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 17th March, 1882.)

An Act to consolidate and amend the law relating to the Courts of Small Causes established in the Presidency-towns.

WHEREAS it is expedient to consolidate and amend the law relating to the Courts of Small Causes established in the towns of Calcutta, Madras and Bombay; It is hereby enacted as follows:— Preamble.

CHAPTER I.

PRELIMINARY.

1. This Act may be called "The Presidency Small Cause Courts Act, 1882"; and it shall come into force on the first day of July, 1882. Short title. Commencement.

But nothing herein contained shall affect the provisions of the Army Act, ~~1881,~~ section 151, or the rights or liabilities of any person under any decree passed before that day.

2. On and from the said day the enactments specified in the first schedule hereto annexed shall be repealed to the extent mentioned therein. Repeal of enactments.

But all Courts constituted, appointments made and securities given under any of the said enactments shall, so far as may be, be deemed to have been respectively constituted, made and given under this Act.

All references to any enactment hereby repealed made in Acts passed prior to the said day shall be read, so far as may be practicable, as if made to this Act or the corresponding provisions hereof. References in previous Acts.

3. In Act No. XXIII of 1850 (*for securing the Land-revenue* Amendment of Acts.

Land-revenue of Calcutta), section 3, for the word and figures "Act VII, 1847," the words and figures "the Presidency Small Cause Courts Act, 1882, Chapter VIII," shall be substituted; the words "as provided by the said Act" shall be repealed; and for each of the expressions "a Commissioner of the Court for recovery of small debts referred to in the said Act," and "the said Commissioners" the words "the Judges of the Court of Small Causes at Calcutta," shall be substituted.

In the Code of Civil Procedure, section 8, after the word and figures "Chapter XXXIX" the words and figures "and by the Presidency Small Cause Courts Act, 1882," shall be inserted.

"Small Cause Court" defined.

4. In this Act, "the Small Cause Court" means the Court of Small Causes constituted under this Act in the town of Calcutta, Madras or Bombay, as the case may be.

CHAPTER II.

CONSTITUTION AND OFFICERS OF THE COURT.

Courts of Small Causes established.

5. There shall be in each of the towns of Calcutta, Madras and Bombay a Court, to be called the Court of Small Causes of Calcutta, Madras or Bombay, as the case may be.

Court to be deemed under superintendence, &c., of High Court.

6. The Small Cause Court shall be deemed to be a Court subject to the superintendence of the High Court of Judicature at Fort William, Madras or Bombay, as the case may be, within the meaning of the Letters Patent, respectively dated the 28th day of December, 1865, for such High Courts, and within the meaning of the Code of Civil Procedure, and the High Court shall have, in respect of the Small Cause Court, the same powers as it has under the twenty-fourth and twenty-fifth of Victoria, chapter 104, section 15, in respect of Courts subject to its appellate jurisdiction.

Appointment, suspension and

7. Subject to the control of the Governor General in Council, the Local Government may, from time to time,

time, by notification in the official Gazette, appoint a person to be Chief Judge, and so many other persons as it thinks fit to be Judges, of the Small Cause Court: Provided that not less than one-third of the persons so appointed, including the Chief Judge, shall be advocates of one of the said High Courts. removal of Judges.

The Local Government may, by a like notification, suspend and, with the previous sanction of the Governor General in Council, remove any Judge so appointed.

All barristers who, when this Act comes into force, are, or are acting as, Judges of the Small Cause Court shall, for the purposes of this section, be deemed to be advocates of a High Court.

8. The Chief Judge shall be the first of the Judges in rank and precedence. Rank and precedence of Judges.

The other Judges shall have rank and precedence as the Local Government may, from time to time, direct.

9. Except as otherwise provided by this or any other law for the time being in force, the Small Cause Court may, with the previous sanction of the High Court, make rules to provide, in such manner as it thinks fit, for all matters not specially provided for by this Act, and for the exercise, by one or more of its Judges, of any powers conferred on the Small Cause Court by this Act or by any other law for the time being in force. Power to make rules.

10. Subject to such rules, the Chief Judge may, from time to time, make such arrangements as he thinks fit for the distribution of the business of the Court among the various Judges thereof. Chief Judge to distribute business of Court.

11. Save as hereinafter otherwise provided, when two or more of the Judges sitting together differ on any question, the opinion of the majority shall prevail; and if the Court is equally divided, the Chief Judge, if he is one of the Judges so differing, or, in his absence, the Judge first in rank and precedence of the Judges so differing, shall have the casting voice. Procedure in case of difference of opinion.

12. The

Seal to be used.

12. The Small Cause Court shall use a seal of such form and dimensions as are for the time being prescribed by the Local Government.

Appointment of Registrar and ministerial officers.

13. The Local Government may, from time to time, appoint an officer to be called the Registrar of the Court, and to be the chief ministerial officer of the Court;

and the Chief Judge may, from time to time, subject to the control of the Local Government, appoint as many clerks, bailiffs and other ministerial officers as may be necessary for the administration of justice by the Court, and for the exercise and performance of the powers and duties conferred and imposed on it by this Act or any other law for the time being in force.

Powers and duties of such officers.

The Registrar and other officers so appointed shall exercise such powers, and discharge such duties, of a ministerial nature, as the Chief Judge may, from time to time, by rule, direct.

The Chief Judge may suspend or remove any Registrar or other officer so appointed; but the removal of any Registrar or officer drawing a monthly salary of one hundred rupees or upwards shall be subject to the orders of the Local Government.

Registrar may be invested with powers of a Judge in suits not exceeding twenty rupees.

14. The Local Government may invest the Registrar with the powers of a Judge under this Act for the trial of suits in which the amount or value of the subject-matter does not exceed twenty rupees. And, subject to the orders of the Chief Judge, any Judge of the Small Cause Court may, whenever he thinks fit, transfer from his own file to the file of the Registrar any suit which the latter is competent to try.

Judge or other officer not to practice or trade.

15. No Judge or other officer appointed under this Act shall, during his continuance as such Judge or officer, either by himself or as a partner of any other person, practice or act, either directly or indirectly, as an advocate, attorney, vakíl or other legal practitioner, or be concerned, either on his own account or for any other person, or as the partner of any other person, in any trade or profession.

Any such Judge or officer so practicing, acting or

or concerned shall be deemed to have committed an offence under section 168 of the Indian Penal Code.

Nothing herein contained shall be deemed to prohibit any such Judge or officer from being a member of any company incorporated or registered under Royal Charter, Letters Patent, Act of Parliament or Act of any British Indian legislature.

CHAPTER III.

LAW ADMINISTERED BY THE COURT.

Questions arising in suits, &c., under Act to be decided according to law administered by High Court.

16. All questions, other than questions relating to procedure or practice, which arise in suits or other proceedings under this Act in the Small Cause Court shall be dealt with and determined according to the law for the time being administered by the High Court in the exercise of its ordinary original civil jurisdiction.

CHAPTER IV.

JURISDICTION IN RESPECT OF SUITS.

Local limits of jurisdiction of Court.

17. The local limits of the jurisdiction of each of the Small Cause Courts shall be the local limits for the time being of the ordinary original civil jurisdiction of the High Court.

Suits in which Court has jurisdiction.

18. Subject to the exceptions in section nineteen, the Small Cause Court shall have jurisdiction to try all suits of a civil nature—

when the amount or value of the subject-matter does not exceed two thousand rupees: and

(*a*) the cause of action has arisen, either wholly or in part, within the local limits of the jurisdiction of the Small Cause Court, and the leave of the Court has, for reasons to be recorded by it in writing, been given before the institution of the suit; or

(*b*) all the defendants, at the time of the institution of the suit, actually and voluntarily reside, or

carry

carry on business, or personally work for gain, within such local limits; or

(*c*) any of the defendants, at the time of the institution of the suit, actually and voluntarily resides, or carries on business, or personally works for gain, within such local limits, and either the leave of the Court has been given before the institution of the suit, or the defendants who do not reside, or carry on business, or personally work for gain, as aforesaid, acquiesce in such institution.

Explanation I.—When in any suit the sum claimed is, by a set-off admitted by both parties, reduced to a balance not exceeding two thousand rupees, the Small Cause Court shall have jurisdiction to try such suit.

Explanation II.—Where a person has a permanent dwelling at one place and also a lodging at another place for a temporary purpose only, he shall be deemed to reside at both places in respect of any cause of action arising at the place where he has such temporary lodging.

Explanation III.—A Corporation or Company shall be deemed to carry on business at its sole or principal office in British India, or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

Suits in which Court has no jurisdiction.

19. The Small Cause Court shall have no jurisdiction in—

(*a*) suits concerning the assessment or collection of the revenue;

(*b*) suits concerning any act ordered or done by the Governor General in Council or the Local Government, or by the Governor General or a Governor, or by any Member of the Council of the Governor General or of the Governor of Madras or Bombay, in his official capacity, or by any person by order of the Governor General in Council or the Local Government;

(*c*) suits concerning any act ordered or done by any Judge or judicial officer in the execution of his office,

office, or by any person in pursuance of any judgment or order of any Court or any such Judge or judicial officer;

(*d*) suits for the recovery of immoveable property;

(*e*) suits for the partition of immoveable property;

(*f*) suits for the foreclosure or redemption of a mortgage of immoveable property;

(*g*) suits for the determination of any other right to or interest in immoveable property;

(*h*) suits for the specific performance or rescission of contracts;

(*i*) suits to obtain an injunction;

(*j*) suits for the cancellation or rectification of instruments;

(*k*) suits to enforce a trust;

(*l*) suits for a general average loss and suits on policies of insurance on sea-going vessels;

(*m*) suits for compensation in respect of collisions on the high seas;

(*n*) suits for compensation for the infringement of a patent, copyright or trade-mark;

(*o*) suits for a dissolution of partnership or for an account of partnership-transactions;

(*p*) suits for an account of property and its due administration under the decree of the Court;

(*q*) suits for compensation for libel, slander, malicious prosecution, adultery or breach of promise of marriage;

(*r*) suits for the restitution of conjugal rights, for the recovery of a wife, or for a divorce;

(*s*) suits for declaratory decrees;

(*t*) suits for possession of a hereditary office;

(*u*) suits against Sovereign Princes or Ruling Chiefs, or against Ambassadors or Envoys of Foreign States;

(*v*) suits

(*v*) suits on any judgment of a High Court;

(*w*) suits the cognizance whereof by the Small Cause Court is barred by any law for the time being in force.

Court may by consent try suits beyond pecuniary limits of jurisdiction.

20. When the parties to a suit which, if the amount or value of the subject-matter thereof did not exceed two thousand rupees, would be cognizable by the Small Cause Court, have entered into an agreement in writing that the Small Cause Court shall have jurisdiction to try such suit, the Court shall have jurisdiction to try the same, although the amount or value of the subject-matter thereof may exceed two thousand rupees.

Every such agreement shall be filed in the Small Cause Court, and, when so filed, the parties to it shall be subject to the jurisdiction of the Court, and shall be bound by its decision in such suit.

Suits by and against officers of Court.

21. All suits to which an officer of the Small Cause Court is, as such, a party, except suits in respect of property taken in execution of its process, or the proceeds or value thereof, may be instituted in the High Court at the election of the plaintiff as if this Act had not been passed.

Costs when plaintiff sues in High Court in other cases cognizable by Small Cause Court.

22. If any suit cognizable by the Small Cause Court, other than a suit to which section twenty-one applies, is instituted in the High Court, and if in such suit the plaintiff obtains, in the case of a suit founded on contract, a decree for any matter of an amount or value less than two thousand rupees, and in the case of any other suit a decree for any matter of an amount or value of less than three hundred rupees, no costs shall be allowed to the plaintiff;

and if in any such suit the plaintiff does not obtain a decree, the defendant shall be entitled to his costs as between attorney and client.

The foregoing rules shall not apply to any suit in which the Judge who tries the same certifies that it was one fit to be brought in the High Court.

CHAPTER V.

CHAPTER V.

Procedure in Suits.

12 **23.** The portions of the Code of Civil Procedure specified in the second schedule hereto annexed shall extend, and shall, so far as the same may, in the judgment of the Court, be applicable, be applied, to the Small Cause Court; and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act:

Portions of Civil Procedure Code extending to Court.

Provided that the Court may, subject to the control of the Local Government, from time to time, by notification in the official Gazette, declare that any of the said portions of the said Code shall not extend and be applied to the Small Cause Court, or that any of such portions shall so extend and be applied with such modifications as the Court, subject to the control aforesaid, may think fit.

24. Except in cases of set-off under the Code of Civil Procedure, section 111, no written statement shall be received unless required by the Court.

No written statement except in cases of set-off.

25. When a period of eight days from the decision of a suit has expired without any application for a new trial or re-hearing of such suit having been made, or when any such application has been made within such period and such application has been refused, or the new trial or re-hearing (as the case may be) has ended, any person, whether a party to the suit or not, desirous of receiving back any document produced by him in the suit and placed on the record, shall, unless the document is impounded under section 143 of the Code of Civil Procedure, be entitled to receive back the same:

Return of documents admitted in evidence.

Provided that a document may be returned at any time before any of such events on such terms as the Court may direct: provided also that no document shall be returned which, by force of the decree, has become void or useless.

On

On the return of a document which has been admitted in evidence, a receipt shall be given, by the party receiving it, in a receipt-book to be kept for the purpose.

Compensation payable by plaintiff to defendant in certain cases.

26. In any suit in which the defendant appears and does not admit the claim, and the plaintiff does not obtain a decree for the full amount of his claim, the Small Cause Court may in its discretion order the plaintiff to pay to the defendant, by way of satisfaction for his trouble and attendance, such sum as it thinks fit.

When any claim preferred, or objection made, under section 278 of the Code of Civil Procedure is disallowed, the Small Cause Court may in its discretion order the person preferring or making such claim or objection to pay to the decree-holder, or to the judgment-debtor, or to both, by way of satisfaction as aforesaid, such sum or sums as it thinks fit.

And when any claim or objection is allowed the Court may award such compensation by way of damages to the claimant or objector as it thinks fit; and the order of the Court awarding or refusing such compensation shall bar any suit in respect of injury caused by the attachment.

Any order under this section may, in default of payment of the amount payable thereunder, be enforced by the person in whose favour it is made against the person against whom it is made as if it were a decree of the Court.

Decree-holder to accompany officer executing warrant.

27. Whenever the Small Cause Court issues a warrant for the arrest of a judgment-debtor or the attachment of his property, the decree-holder, or some other person on his behalf, shall accompany the officer of the Court entrusted with the execution of such warrant, and shall point out to such officer the judgment-debtor or the property to be attached, as the case may be.

Things attached to veable property and

28. When the judgment-debtor under any decree of the Small Cause Court is a tenant of immoveable property, anything attached to such property, and which

which he might before the termination of his tenancy lawfully remove without the permission of his landlord, shall, for the purpose of the execution of such decree, be deemed to be moveable property, and may, if sold in such execution, be severed by the purchaser, but shall not be removed by him from the property until he has done to the property whatever the judgment-debtor would have been bound to do to it if he had removed such thing.

removeable by tenant to be deemed moveable in execution.

29. Whenever any judgment-debtor, who has been arrested or whose property has been seized in execution of a decree of the Small Cause Court, offers security to the satisfaction of such Court for payment of the amount which he has been ordered to pay and the costs, the Court may order him to be discharged or the property to be released.

Discharge of judgment-debtor on sufficient security.

30. Whenever it appears to the Small Cause Court that any judgment-debtor under its decree is unable, from sickness, poverty or other sufficient cause, to pay the amount of the decree, or, if such Court has ordered the same to be paid in instalments, the amount of any instalment thereof, it may, from time to time, for such time and upon such terms as it thinks fit, suspend the execution of such decree and discharge the debtor, or make such order as it thinks fit.

Court may in certain cases suspend execution of decree.

31. If the judgment-debtor under any decree of the Small Cause Court has not, within the local limits of its jurisdiction, moveable property sufficient to satisfy the decree, the Court may, on the application of the decree-holder, send the decree for execution—

Execution of decree of Small Cause Court by other Courts.

(*a*) in the case of execution against immoveable property situate within such local limits—to the High Court;

(*b*) in all other cases—to any Civil Court within the local limits of whose jurisdiction such judgment-debtor, or any moveable or immoveable property of such judgment-debtor, may be found.

The procedure prescribed by the Code of Civil Procedure for the execution of decrees by Courts other

Procedure when decree transferred.

other than those which made them shall be the procedure followed in such cases.

Minors may sue in certain cases as if of full age.

32. Notwithstanding anything contained in the Code of Civil Procedure as applied by this Act, any minor may institute a suit for any sum of money, not exceeding five hundred rupees, which may be due to him under section 70 of the Indian Contract Act, 1872, for wages or piece-work or for work as a servant, in the same manner as if he were of full age.

Power to delegate non-judicial duties.

33. Any non-judicial or quasi-judicial act which the Code of Civil Procedure as applied by this Act requires to be done by a Judge, and any act which may be done by a Commissioner appointed to examine and adjust accounts under section 394 of that Code as so applied, may be done by the Registrar of the Small Cause Court or by such other officer of that Court as that Court may, from time to time, appoint in this behalf.

The High Court may, from time to time, by rule declare what shall be deemed to be non-judicial and quasi-judicial acts within the meaning of this section.

Registrar to hear and determine suits like a Judge.

34. The suits cognizable by the Registrar under section fourteen shall be heard and determined by him in like manner in all respects as a Judge of the Court might hear and determine the same:

Proviso.

Provided that, subject to the control of the Chief Judge, any Judge of the Court may, whenever he thinks fit, transfer to his own file any suit on the file of the Registrar.

Registrar may execute all decrees with the same powers as a Judge.

35. The Registrar may receive applications for the execution of decrees of any value passed by the Court, and may commit and discharge judgment-debtors, and make any order in respect thereof which a Judge of the Court might make under this Act.

Decrees and orders of Registrar to be subject to new trial as if made by a Judge.

36. Every decree and order made by the Registrar in any suit or proceeding shall be subject to the same provisions in regard to new trial as if made by a Judge of the Court.

CHAPTER VI.

Chapter VI.—For this chapter substitute the following:—

New Trials and Re-hearing.

37. Save as is herein specially provided, every decree and order of the Small Cause Court in a suit shall be final and conclusive; but the Court may, on application of either party, made within eight days from the date of the decree or order in any suit (not being a decree passed under section 522 of the Code of Civil Procedure), order a new trial to be held, or alter, set aside or reverse the decree or order, upon such terms as it thinks reasonable, and may, in the meantime, stay the proceedings.

Judgments and orders of Court final.

Power to order new trial in Small Cause Court.

38. Any party may, within eight days after the judgment in any suit in the Small Cause Court in which the amount or value of the subject-matter exceeds one thousand rupees, apply to the High Court for an order that such suit may be re-heard in the High Court.

Application for re-hearing in High Court.

Such application shall be supported by affidavits, and, in case the applicant has appeared in the Small Cause Court by advocate, vakíl, attorney or pleader, by a certificate from such advocate, vakíl, attorney or pleader that in his opinion there are good grounds for re-hearing the suit, and if, on hearing such application, the High Court is of opinion that there has been a miscarriage or failure of justice, or that there are other good grounds for such re-hearing, the Court shall make an order *ex parte*, on such terms as it thinks fit, for such re-hearing, and fix a day for the same, whereof notice shall be given to the opposite party.

The rules contained in sections 545, 546 and 547 of the Code of Civil Procedure, relating to staying and executing decrees under appeal, shall apply in the case of applications under this section as if such applications were appeals from the decisions of the Small Cause Court.

39. On the day fixed under section thirty-eight or on any other day to which the re-hearing may be adjourned,

Procedure at re-hearing.

adjourned, the High Court, or some Judge thereof, shall proceed to re-hear and determine the case as if the same were a suit brought in such High Court in its ordinary original civil jurisdiction, in which the plaintiff in the Small Cause Court was plaintiff, and the defendant in such Court was defendant, and in which written statements had not been ordered to be filed; and, except as herein otherwise provided, all the practice and procedure of such High Court in respect of suits brought in its ordinary original civil jurisdiction shall be followed in suits re-heard under this section: provided that there shall not be any appeal from any judgment, decree or order under this section.

Execution of decree of High Court.

40. Every decree or order made by any High Court upon any such re-hearing may either be executed by such High Court in the same manner as other decrees or orders of such Court or may, in the discretion of the High Court, be remitted to the Small Cause Court for execution.

CHAPTER VII.

Recovery of Possession of Immoveable Property.

Summons against person occupying property without leave.

41. When any person has had possession of any immoveable property situate within the local limits of the Small Cause Court's jurisdiction and of which the annual value at a rack-rent does not exceed one thousand rupees, as the tenant, or by permission, of another person, or of some person through whom such other person claims,

and such tenancy or permission has determined or been withdrawn,

and such tenant or occupier or any person holding under or by assignment from him (hereinafter called the occupant) refuses to deliver up such property in compliance with a request made to him in this behalf by such other person,

such

such other person (hereinafter called the applicant) may apply to the Small Cause Court for a summons against the occupant, calling upon him to show cause, on a day therein appointed, why he should not be compelled to deliver up the property.

Service of summons.

42. The summons shall be served on the occupant in the manner provided by the Code of Civil Procedure for the service of a summons on a defendant.

Order for possession.

43. If the occupant does not appear at the time appointed and show cause to the contrary, the applicant shall, if the Small Cause Court is satisfied that he is entitled to apply under section forty-one, be entitled to an order addressed to a bailiff of the Court directing him to give possession of the property to the applicant on such day as the Court thinks fit to name in such order.

Explanation.—If the occupant proves that the tenancy was created or permission granted by virtue of a title which determined previous to the date of the application, he shall be deemed to have shown cause within the meaning of this section.

Such order to justify bailiff entering on property and giving possession.

Bar to proceedings against Judge or officer for issuing, &c., order or summons.

44. Any such order shall justify the bailiff to whom it is addressed in entering after the hour of six in the morning and before the hour of six in the afternoon upon the property named therein, with such assistants as he thinks necessary, and giving possession of such property to the applicant: and no suit or prosecution shall be maintainable against any Judge or officer of the Small Cause Court by whom any such order as aforesaid was issued, or against any bailiff or other person by whom the same was executed, or by whom any such summons as aforesaid was served, for the issue, execution or service of any such order or summons, by reason only that the applicant was not entitled to the possession of the property.

Applicant, if entitled to possession, not to be deemed trespasser for

45. When the applicant, at the time of applying for any such order as aforesaid, was entitled to the possession of such property, neither he nor any person acting in his behalf shall be deemed, on account of any

any error in proceedings.

Occupant may sue for compensation.

any error, defect or irregularity in the mode of proceeding to obtain possession thereunder, to be a trespasser; but any person aggrieved may bring a suit for the recovery of compensation for any damage which he has sustained by reason of such error, defect or irregularity:

when no such damage is proved, the suit shall be dismissed; and when such damage is proved but the amount of the compensation assessed by the Court does not exceed ten rupees, the Court shall award to the plaintiff no more costs than compensation, unless the Judge who tries the case certifies that in his opinion full costs should be awarded to the plaintiff.

Liability of applicant obtaining order when not entitled.

46. Nothing herein contained shall be deemed to protect any applicant obtaining possession of any property under this chapter from a suit by any person deeming himself aggrieved thereby, when such applicant was not at the time of applying for such order as aforesaid entitled to the possession of such property.

Application for order in such case an act of trespass.

And when the applicant was not, at the time of applying for any such order as aforesaid, entitled to the possession of such property, the application for such order, though no possession is taken thereunder, shall be deemed to be an act of trespass committed by the applicant against the occupant.

Stay of proceedings on occupant giving security to bring suit against applicant.

47. Whenever on an application being made under section forty-one the occupant binds himself, with two sureties, in a bond for such amount as the Small Cause Court thinks reasonable, having regard to the value of the property and the probable costs of the suit next hereinafter mentioned, to institute without delay a suit in the High Court against the applicant for compensation for trespass and to pay all the costs of such suit in case he does not prosecute the same or in case judgment therein is given for the applicant, the Small Cause Court shall stay the proceedings on such application until such suit is disposed of.

If the occupant obtains a decree in any such suit against

against the applicant, such decree shall supersede the order (if any) made under section forty-three.

Nothing contained in section twenty-two shall apply to suits under this section.

Proceedings to be regulated by Code of Civil Procedure.

48. In all proceedings under this chapter, the Small Cause Court shall, as far as may be and except as herein otherwise provided, follow the procedure prescribed for a Court of first instance by the Code of Civil Procedure.

Recovery of possession no bar to suit to try title.

49. Recovery of the possession of any immoveable property under this chapter shall be no bar to the institution of a suit in the High Court for trying the title thereto.

CHAPTER VIII.

DISTRESSES.

Local extent of chapter.

Saving of certain rents.

50. This chapter extends to every place within the local limits of the ordinary original civil jurisdictions of the High Courts of judicature at Fort William, Madras and Bombay. But nothing contained in this chapter applies—

(*a*) to any rent due to Government ;

(*b*) to any rent which has been due for more than twelve months before the application mentioned in section fifty-three.

Appointment of bailiffs and appraisers.

51. The Judges of the Small Cause Court may appoint four or more persons to be bailiffs and appraisers for the purpose of this chapter, and may, from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Security to be given by appointees.

52. The persons so appointed shall give security, to be approved by the said Judges, faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

Application for distress-warrant.

53. Any person claiming to be entitled to arrears of rent of any house or premises to which this chapter extends, or his duly constituted attorney, may apply

to

to any Judge of the Small Cause Court, or to the Registrar of the Small Cause Court, for such warrant as is hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the third schedule hereto annexed.

Issue of distress-warrant.

54. The Judge or Registrar may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form (marked B) contained in the same schedule, addressed to any one of such bailiffs.

The Judge or Registrar may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

Time for distress.

55. Every distress under this chapter shall be made after sunrise and before sunset, and not at any other time.

What places bailiff may force open.

56. The bailiff directed to make the distress may force open any stable, outhouse or other building, and may also enter any dwelling-house the outer door of which may be open, and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this chapter :

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which by the usage of the country is considered private.

Property which may be seized.

57. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may, in the bailiff's judgment, be sufficient to cover the amount of the said rent, together with the costs of the said distress:

Provided that the bailiff shall not seize—

(*a*) things in actual use ; or

(*b*) tools and implements not in use, where there is other moveable property in or upon the house or premises

premises sufficient to cover such amount and costs ; or

(*c*) the debtor's necessary wearing apparel ; or

(*d*) goods in the custody of the law.

Impounding distress.

58. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Inventory.

59. On seizing any property under section fifty-seven the bailiff shall make an inventory of such property, and shall give a notice in writing to the effect of the form (marked C) in the third schedule hereto annexed to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Notice of intended appraisement and sale.

Copies of inventory and notice to be filed.

The bailiff shall, as soon as may be, file in the Small Cause Court copies of the said inventory and notice.

Application to discharge or suspend warrant.

60. The debtor or any other person alleging himself to be the owner of any property seized under this chapter, or the duly constituted attorney of such debtor or other person, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

Claim to goods distrained made by a stranger.

61. If any claim is made to, or in respect of, any property seized under this chapter, or in respect of the proceeds or value thereof, by any person not being the debtor, the Registrar of the Small Cause Court, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Small Cause Court shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Small Cause Courts in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Power to award compensation to debtor or claimant.

62. In any case under section sixty or section sixty-one the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and the order of the Judge awarding or refusing such compensation shall bar any suit for the recovery of compensation for any damage caused by the distress.

Power to transfer to High Court cases involving more than Rs. 1,000.

63. In any case under section sixty or section sixty-one, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court, on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Small Cause Court, and may make such order therein as the High Court thinks fit.

Every application under this section shall be made within

within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform, as far as may be, to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit for the recovery of compensation for any damage caused by the distress which gave rise to the case wherein such order was made.

Appraisement.

64. In default of any order to the contrary by a Judge of the Small Cause Court or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this chapter, appraise the property so seized, and give the debtor notice in writing to the effect of the form (marked D) in the third schedule hereto annexed.

Notice of sale.

The bailiffs shall file in the Small Cause Court a copy of every notice given under this section.

Sale.

65. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall, on realizing the proceeds, pay over the amount thereof to the Registrar of the Small Cause Court; and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Application of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

Costs of distresses.

66. No costs of any distress under this chapter shall be taken or demanded except those mentioned in

in the part (marked E) of the third schedule hereto annexed.

The Judges of the Small Cause Court may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

Account of costs and proceeds.

67. The Registrar of the Small Cause Court shall keep a book in which all sums received as costs upon distresses made under this chapter, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses, shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this chapter.

Bar of distresses except under this chapter.

68. No distress shall be levied for arrears of rent, except under the provisions of this chapter;

Penalty for making illegal distresses.

And any person, except a bailiff appointed under section fifty-one, levying or attempting to levy any such distress shall, on conviction before a Presidency Magistrate, be liable to be punished with fine which may extend to five hundred rupees and with imprisonment for a term which may extend to three months, in addition to any other liability he may have incurred by his proceedings.

CHAPTER IX.

References to High Court.

Reference when compulsory.

69. If two or more Judges of the Small Cause Court sit together in any suit, or in any proceeding under Chapter VII of this Act, and differ in their opinion as to any question of law or usage having the force of law, or the construction of a document, which construction may affect the merits,

or if in any suit or any such proceeding, in which the amount or value of the subject-matter exceeds five

five hundred rupees, any such question arises, and either party so requires,

the Small Cause Court shall draw up a statement of the facts of the case, and refer such statement, under section 617 of the Code of Civil Procedure, for the opinion of the High Court, and shall either reserve judgment or give judgment contingent upon such opinion.

Security to be furnished on such reference by party against whom contingent judgment given.

70. When judgment is given under section sixty-nine contingent upon the opinion of the High Court, the party against whom such judgment is given shall at once furnish security, to be approved by the Small Cause Court, for the costs of the reference to the High Court and for the amount of such judgment:

Provided that no security for the amount of such judgment shall be required in any case in which the Judge who tried the case has ordered such amount to be paid into Court, and the same has been paid accordingly.

If no such security given, party to be deemed to have submitted to judgment.

Unless such security as aforesaid is at once furnished, the party against whom such contingent judgment has been given shall be deemed to have submitted to the same.

CHAPTER X.

FEES AND COSTS.

Institution-fee.

71. A fee not exceeding—

(*a*) when the amount or value of the subject-matter does not exceed five hundred rupees—the sum of two annas in the rupee on such amount or value,

(*b*) when the amount or value of the subject-matter exceeds five hundred rupees—the sum of sixty-two rupees eight annas, and one anna in the rupee on the excess of such amount or value, over five hundred rupees,

shall be paid on the plaint in every suit, and every application under ~~section thirty-eight or~~ section

tion forty-one; and no such plaint or application shall be received until such fee has been paid.

An additional fee of ten rupees shall be paid on the filing of every agreement under section twenty.

Fees for processes.

72. The fees specified in the third and fourth columns of the fourth schedule hereto annexed shall be paid previous to the issue in any suit or in any proceeding under Chapter VII of this Act of the processes, to which the said columns respectively relate, by the persons on whose behalf such processes are issued, when the amount or value of the subject-matter exceeds the sum specified in the first column, but does not exceed the sum specified in the second column of the said schedule.

Repayment of half fees on settlement before hearing.

73. Whenever any such suit or proceeding is settled by agreement of the parties before the hearing, half the amount of all fees paid up to that time shall be repaid by the Small Cause Court to the parties by whom the same have been respectively paid.

Fees and costs of poor persons.

74. The Small Cause Court may, whenever it thinks fit, receive and register suits instituted, and applications under section forty-one made, by poor persons, and may issue processes on behalf of such persons, without payment or on a part-payment of the fees mentioned in sections seventy-one and seventy-two.

Power to vary fees.

75. The Local Government may, from time to time, by notification in the official Gazette, vary the amount of the fees payable under sections seventy-one and seventy-two:

Provided that the amount of such fees shall in no case exceed the amount prescribed by the said sections.

Expense of employing legal practitioners.

76. The expense of employing an advocate, vakíl, attorney or other legal practitioner incurred by any party shall not be allowed as costs in any suit or in any proceeding under Chapter VII of this Act, in the Small Cause Court, in which suit or proceeding the amount or value of the subject-matter does not exceed twenty rupees, unless the Court is of opinion that the

the employment of such practitioner was under the circumstances reasonable.

77. Nothing contained in this chapter shall affect the provisions of sections 3, 5 and 25 of the Court Fees Act, 1870.

Sections 3, 5 and 25 of Court Fees Act, 1870, saved.

CHAPTER XI.

Misconduct of inferior Ministerial Officers.

78. The Chief Judge may, by order, fine, in an amount not exceeding one month's salary, any clerk, bailiff or other inferior ministerial officer of the Court who is guilty of misconduct or neglect in the performance of the duties of his office, and such fine may be deducted from his salary.

Power to fine officers.

79. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court who is employed as such in the execution of any order or warrant, loses, by neglect, connivance or omission, an opportunity of executing such order or warrant, he shall be liable, by order of the Chief Judge, on the application of the person injured by such neglect, connivance or omission, to pay such sum, not exceeding in any case the sum for which the said order or warrant was issued, as, in the opinion of the Chief Judge, represents the amount of the damage sustained by such person thereby.

Default of bailiff or other officer in execution of order or warrant.

80. If any clerk, bailiff or other inferior ministerial officer of the Small Cause Court is charged with extortion or misconduct while acting under colour of its process, or with not duly paying or accounting for any money levied by him under its authority, the Court may inquire into such charge, and may make such order for the repayment or payment of any money so extorted, or of any money so levied as aforesaid, and of damages and costs, by such officer, as it thinks fit.

Extortion or default of officers.

81. For the purposes of any inquiry under this chapter, the Small Cause Court shall have all the powers of summoning and enforcing the attendance

Court empowered to summon witnesses, &c.

of

of witnesses and compelling the production of documents which it possesses in suits under this Act.

Enforcement of order.

82. Any order under this chapter for the payment or repayment of money may, in default of payment of the amount payable thereunder, be enforced by the person to whom such amount is payable as if the same were a decree of the Small Cause Court in his favour.

CHAPTER XII.

CONTEMPT OF COURT.

Procedure of Court in certain cases of contempt.

83. When any such offence as is described in section 175, 178, 179, 180 or 228 of the Indian Penal Code is committed in the view or presence of the Small Cause Court, the Court may cause the offender to be detained in custody; and, at any time before the rising of the Court on the same day, may, if it thinks fit, take cognizance of the offence, and punish the offender with fine which may extend to two hundred rupees, and in default of payment of such fine with imprisonment in the civil jail for a term which may extend to one month unless such fine is sooner paid.

Record in such cases.

84. In every such case the Court shall record the facts constituting the offence, the statement (if any) made by the offender, and the finding and sentence.

If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court when interrupted or insulted was sitting, and the nature of the interruption or insult offered.

Procedure where Court considers that case should not be dealt with under section 83.

85. If the Court considers that a person accused of any offence referred to in section eighty-three and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or if the Court is for any other reason of opinion that the case should not be disposed of under section eighty-three, the Court, after recording the facts constituting the offence and the statement

ment of the accused as hereinbefore provided, may forward the case to a Presidency Magistrate, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, may forward him under custody to such Magistrate.

Such Magistrate shall deal with the accused person in the manner provided by the Presidency Magistrates' Act, 1877; and may sentence the offender to punishment as provided in the section of the Indian Penal Code under which he is charged.

Discharge of offender on submission or apology.

86. When the Court has, under section eighty-three or section eighty-five, punished an offender, or forwarded him to a Presidency Magistrate for trial, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may in its discretion discharge the offender or remit the punishment on his submission to the order or requisition of the Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

87. If any witness before the Small Cause Court refuses to answer such questions as are put to him, or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, the Court may sentence him to simple imprisonment, or commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to answer such questions or to produce such document, as the case may be, after which, in the event of his persisting in his refusal, he may be dealt with according to the provisions of section eighty-three or section eighty-five.

Appeal from orders under sections 83 and 87.

88. Any person deeming himself aggrieved by an order under section eighty-three or section eighty-seven may appeal to the High Court, and the provisions of the Presidency Magistrates' Act, 1877, relating to appeals shall, so far as may be, apply to appeals under this section.

CHAPTER XIII

CHAPTER XIII.

MISCELLANEOUS.

Persons by whom process may be served.

89. Notices to produce documents, summonses to witnesses, and all other processes issued in the exercise of any jurisdiction conferred on the Small Cause Court by this Act, except summonses to defendants and writs of execution, may, if the Court by general or special order so directs, be served by such persons as the Court, from time to time, appoints in this behalf.

Registers and returns.

90. The Small Cause Court shall keep such registers, books and accounts, and submit to the High Court such statements and returns, as may, subject to the approval of the Local Government, be prescribed by the High Court.

Court to furnish records, &c., called for by Local Government or High Court.

91. The Small Cause Court shall comply with such requisitions as may, from time to time, be made by the Local Government or High Court for records, returns and statements in such form and manner as such Government or Court, as the case may be, thinks fit.

Holidays and vacations.

92. The Small Cause Court shall, at the commencement of each year, draw up a list of holidays and vacations to be observed in the Court, and shall submit the same for the approval of the Local Government.

Such list, when it has received such approval, shall be published in the local official Gazette, and the said holidays and vacations shall be observed accordingly.

Certain persons exempt from arrest by Court.

93. The Governor General and Members of his Council, the Governors of Fort St. George and Bombay, and the Members of their respective Councils, the Lieutenant-Governor of Bengal, and the Chief Justices and Judges of the High Courts established under the twenty-fourth and twenty-fifth of Victoria, chapter 104, shall not be liable to arrest by order of the Small Cause Court.

94. No

94. No suit shall lie on any decree of the Small Cause Court. No suit to lie upon decree of Court.

95. Any person ordered by the Small Cause Court to be imprisoned may be imprisoned in such place as the Local Government, from time to time, appoints in this behalf. Place of imprisonment.

96. If any person against whom any suit is brought for anything purporting to be done by him under this Act has, before the institution of the suit, tendered sufficient amends to the plaintiff, the plaintiff shall not recover. Tender in suit for anything done under Act.

97. All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed. Limitation of prosecutions.

THE

THE FIRST SCHEDULE.

(*See section 2.*)

ENACTMENTS REPEALED.

A.—Charters of the Supreme Courts.

Date.		Extent of repeal.
26th March, 1774	Charter of the Supreme Court at Fort William.	Clause 21.
26th December, 1800	Charter of the Supreme Court at Madras.	Clause 47.
8th December, 1823	Charter of the Supreme Court at Bombay.	Clause 59.

B.—Acts of the Governor General in Council.

Number and year.	Subject or short title.	Extent of repeal.
IX of 1850 ...	For the more easy recovery of small debts and demands in Calcutta, Madras and Bombay.	So much as has not been repealed.
XX of 1857 ...	To amend Act IX of 1850 ...	The whole.
XXVI of 1864 ...	To extend the jurisdiction of the Courts of Small Causes at Calcutta, Madras and Bombay, and to provide for the appointment of an increased number of Judges of these Courts.	So much as has not been repealed.
I of 1875 ...	To regulate Distresses for Rents in the Presidency-towns.	The whole.
X of 1877 ...	The Code of Civil Procedure	Section eight, para. 2.

THE

THE FIRST SCHEDULE—*concluded.*

C.—Act of the Governor of Bombay in Council.

Number and year.	Subject.	Extent of repeal.
VI of 1864 ...	For the better regulation of the diet-money of persons imprisoned by the Bombay Court of Small Causes.	So much as has not been repealed.

THE SECOND SCHEDULE.

(*See section 23.*)

PORTIONS OF CIVIL PROCEDURE CODE EXTENDING TO COURT.

PRELIMINARY: Section 2, Interpretation-clause.

CHAPTER I.—Of the Jurisdiction of the Courts and *Res Judicata*, except section 11.

CHAPTER II.—Of the Place of suing, except sections 15 to 19 (both inclusive), section 20, paragraph 4, sections 22, 23 and 24 and section 25, paragraphs 2 and 3.

CHAPTER III.—Of Parties and their Appearances, Applications and Acts, except section 37, clause (*b*), and the last paragraph.

CHAPTER IV.—Of the Frame of the Suit, except section 42 and section 44, rule *a*.

CHAPTER V.—Of the Institution of Suits, except section 53, clause (*e*), section 55, section 57, clause (*b*), and sections 58 and 62.

CHAPTER VI.—Of the Issue and Service of Summons, except, in section 64, the words "and the copies or concise statements required by section 58 have been filed," and sections 65, 66 and 86.

CHAPTER VII.—Of the Appearance of the Parties and Consequence of Non-appearance.

CHAPTER VIII.—Of Written Statements and Set-off, except sections 110, 112 and 113.

CHAPTER IX.—Of the Examination of the Parties by the Court, except section 119.

CHAPTER X.—Sending for Records and Production, &c., of Documents, sections 137 (except paragraph 2), 138, 140 (except the proviso and the last six words), 141 (except the third sentence), 142, 143 and 145.

CHAPTER XI.—Settlement of issues, sections 150 and 151.

CHAPTER XII.—Disposal of the Suit at the first hearing, except sections 154 and 155.

CHAPTER XIII.—Of Adjournments.

THE

THE SECOND SCHEDULE—*concluded.*

CHAPTER XIV.—Of the Summoning and Attendance of Witnesses, except sections 168, 169, 170 and 175.

CHAPTER XV.—Of the Hearing of the Suit and Examination of Witnesses, except sections 182 to 191 (both inclusive).

CHAPTER XVI.—Of Affidavits.

CHAPTER XVII.—Of Judgment and Decree, except sections 200, 201, 202, 204, 207 and 211 to 215 (both inclusive).

CHAPTER XVIII.—Of Costs.

CHAPTER XIX.—Of the Execution of Decrees, section 230, first two clauses, sections 231 to 236 (both inclusive), 243 to 259 (both inclusive), 266 (so far as relates to the attachment of moveable property or decrees therefor), 267 to 272 (both inclusive), 273 (so far as relates to decrees for moveable property), 275 to 303 (both inclusive), 328 to 333 (both inclusive), 336 (except the last three clauses), and 337 to 343 (both inclusive).

CHAPTER XXI.—Of the Death, Marriage and Insolvency of Parties.

CHAPTER XXII.—Of the Withdrawal and Adjustment of Suits.

CHAPTER XXIII.—Of Payment into Court.

CHAPTER XXIV.—Of Requiring Security for Costs.

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CHAPTER XXIX.—Suits by and against Corporations and Companies.

CHAPTER XXX.—Suits by and against Trustees, Executors and Administrators.

CHAPTER XXXI.—Suits by and against Minors and Persons of Unsound Mind.

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CHAPTER XXXVIII—Of Proceedings on Agreement of Parties, except so much of section 527, clause (*b*), as relates to immoveable property.

CHAPTER XLVI.—Of Reference to and Revision by High Court.

CHAPTER XLIX.—Miscellaneous, sections 640 to 651 (both inclusive).

THE

THE THIRD SCHEDULE.

FORMS.

A.

[*See section 53.*]

In the Small Cause Court for

*A. B.*_____(Plaintiff),

versus

*C. D.*_____(Defendant).

A. B. of_____, in the town of_____, maketh oath [*or* affirms] and saith that *C. D.*_____, of_____, is justly indebted to_____in the sum of Rs._____for arrears of rent of the house and premises No._____, situated at_____, in the town of_____, due for_____months, to wit from_____to_____, at the rate of Rs._____per mensem.

Sworn [*or* affirmed] before me the_____day of_____ 188 .

Judge [or *Registrar.*]

B.

[*See section 54.*]

In the Small Cause Court for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of *C. D.*, on the house and premises situate at No._____, in the town of_____, for the sum of_____ Rs. and the costs of the distress, according to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated day of 18 .

(*Signed and sealed.*)

To *E. F., Bailiff and Appraiser.*

C.

[*See section 59.*]

In the Small Cause Court for

FORM OF INVENTORY AND NOTICE.

(*State particulars of property seized.*)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of_____Rs., being the amount of_____months' rent due to *A. B.* at_____last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges or the Registrar of the Small Cause Court to the contrary, the same will be appraised and sold pursuant to the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882. Dated the day of 188 .

(Signed) *E. F.,*
Bailiff and Appraiser.

To *C. D.*

THE

THE THIRD SCHEDULE—*concluded.*

D.

[*See section 64.*]

In the Small Cause Court for

Take notice that we have appraised the moveable property seized on the_____ day of_____, under the provisions of Chapter VIII of the Presidency Small Cause Courts Act, 1882, of which seizure and property a notice and inventory were duly served upon you [*or* upon_____on your behalf, *as the case may be*] under date the_____, and that the said property will be sold on the_____ [*two clear days at least after the date of the notice*] at pursuant to the provisions of the said Act. Dated this_____day of_____188 .

(Signed) *E. F.*,
G. H.,
Bailiffs and Appraisers.

To *C. D.*

E.

[*See section 66.*]

In the Small Cause Court for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE-RENT.

Sums sued for.		Affidavit and warrant to distrain.			Order to sell.			Commission.			TOTAL.		
Rs.	Rs.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.	Rs.	A.	P.
1 and under	5 ...	0	4	0	0	8	0	0	8	0	1	4	0
5 ,,	10 ...	0	8	0	0	8	0	1	0	0	2	0	0
10 ,,	15 ...	0	8	0	0	8	0	1	8	0	2	8	0
15 ,,	20 ...	0	8	0	1	0	0	2	0	0	3	8	0
20 ,,	25 ...	0	12	0	1	0	0	2	8	0	4	4	0
25 ,,	30 ...	1	0	0	1	0	0	3	0	0	5	0	0
30 ,,	35 ...	1	0	0	1	0	0	3	8	0	5	8	0
35 ,,	40 ...	1	0	0	1	8	0	4	0	0	6	8	0
40 ,,	45 ...	1	4	0	2	0	0	4	8	0	7	12	0
45 ,,	50 ...	1	8	0	2	0	0	5	0	0	8	8	0
50 ,,	60 ...	2	0	0	2	0	0	6	0	0	10	0	0
60 ,,	80 ...	2	8	0	2	8	0	6	8	0	11	8	0
80 to	100 ...	3	0	0	3	0	0	7	0	0	13	0	0
Upwards of	100 ...	3	0	0	3	0	0	7 per centum			...		

The above scale includes all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpœnaed, in which case each subpœna for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons are kept in charge of property distrained, four annas per day must be paid per man.

THE

THE FOURTH SCHEDULE.

[*See section 72.*]

FEES FOR SUMMONSES AND OTHER PROCESSES.

When the amount or value of the subject-matter exceeds	But does not exceed	Fee for summons.	Fee for other processes.
Rs.	Rs.	Rs. A. P.	Rs. A. P.
0	10	0 2 0	0 2 0
10	20	0 4 0	0 4 0
20	50	0 8 0	0 8 0
50	100	1 0 0	1 0 0
100	200	1 4 0	2 0 0
200	300	1 8 0	3 0 0
300	400	1 12 0	4 0 0
400	500	2 0 0	5 0 0
500	600	2 4 0	6 0 0
600	700	2 8 0	7 0 0
700	800	2 12 0	8 0 0
800	900	3 0 0	9 0 0
900	1,000	3 4 0	10 0 0
1,000	1,100	3 6 0	10 8 0
1,100	1,200	3 8 0	11 0 0
1,200	1,300	3 10 0	11 8 0
1,300	1,400	3 12 0	12 0 0
1,400	1,500	3 14 0	12 8 0
1,500	1,600	4 0 0	13 0 0
1,600	1,700	4 2 0	13 8 0
1,700	1,800	4 4 0	14 0 0
1,800	1,900	4 6 0	14 8 0
1,900	2,000	4 8 0	15 0 0

Government of India Central Printing Office—No. 324 L. D.—27-4-82.—3,500

THE JHANSÍ ENCUMBERED ESTATES ACT, 1882.

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[*Price five annas and six pies.*]

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ACT No. XVI OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th May, 1882.)

An Act to provide for the relief of Encumbered Estates in the Jhánsí Division of the North-Western Provinces.

Preamble.

WHEREAS many zamíndárs in the ~~Jhánsí Division~~ of the North-Western Provinces are in debt, and their immoveable property is subject to encumbrances, and it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Act may be called the Jhánsí Encumbered Estates Act, 1882:

Commencement.

and it shall come into force on the passing thereof.

Interpretation-clause.

2. In this Act—

"land".

"land" means land assessed to revenue:

"zamíndár".

"zamíndár" means a proprietor of land or of any share in land, and includes an ubáridár:

"sír-land".

"sír-land" means—

(*a*) land recorded as sír at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since;

(*b*) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour;

(*c*) land

(*c*) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers:

"public debt": "public debt" means a debt due or liability incurred to Government: and

"private debt." "private debt" means any debt or liability other than a public debt.

CHAPTER II.

APPOINTMENT OF OFFICERS.

of 1890.

Power to appoint a special Judge.

3. The Local Government may, from time to time, by notification in the official Gazette, appoint, for any local area in the Jhánsí Division, a special Judge, who shall exercise the powers conferred, and perform the duties imposed, on him by this Act.

Power to suspend or remove special Judge.

The Local Government may, at any time, by a like notification, suspend or remove any special Judge so appointed.

CHAPTER III.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

Application for benefit of Act.

4. (1) At any time within twelve months after a special Judge is appointed for any local area, any zamíndár owning land in that area may apply in writing to the ~~Commissioner of the Jhánsí Division~~, stating that the zamíndár is subject to, or that his immoveable property or any part thereof is encumbered with, private debts, and requesting that the provisions of this Act be applied to him.

(2) The like application may be made with respect to any such zamíndár by an officer appointed for the purpose by the Local Government:

(3) Provided that, where the zamíndár is a disqualified proprietor within the meaning of section 194 of the North-Western Provinces Land-revenue Act, 1873, the application shall be made—

(*a*) if his property is under the superintendence of the

the Court of Wards—by the manager of his property, with the consent of that Court; and

(*b*) if his property is not under such superintendence—by the ~~Deputy Commissioner~~ of the district in which the property is situate.

(4) The Local Government may, from time to time, by notification in the official Gazette, extend the time prescribed for making applications under this section. Power to extend time for making applications.

5. When any such application is made in the case of any zamíndár, the Commissioner shall direct an inquiry to be made by the special Judge— Order to inquire.

(*a*) into the nature and amount of the zamíndár's private debts, and

(*b*) into the sufficiency of his property, whether moveable or immoveable (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure), to discharge his private debts.

6. (1) When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the special Judge a written statement containing, so far as may be practicable,— Written statement to be submitted.

(*a*) such particulars as the special Judge may require respecting the private debts to which the zamíndár is subject, or with which his immoveable property or any part thereof is encumbered;

(*b*) the nature and value of the zamíndár's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure); and

(*c*) the names and residences of his creditors, so far as they are known to, or can be ascertained by, the zamíndár.

(2) The statement must be verified by the applicant or by some other competent person, in the manner required by law for the verification of plaints; and if Verification of statement.

it

it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

Proviso.

(3) Provided that, when the application is made by an officer appointed under section four, clause (2), or by the Deputy Commissioner, it shall not be necessary to verify the statement; but the zamíndár shall, so far as may be practicable, within a period to be fixed by the special Judge, furnish such information regarding the matters mentioned in clauses (*a*), (*b*) and (*c*) of this section as the Judge may require.

CHAPTER IV.

PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE.

Publication of notice to claimants against zamíndár.

7. (1) When the statement or information referred to in section six has been submitted or furnished, the special Judge shall publish in the official Gazette a notice in the vernacular language of the district calling upon all persons having claims against the person or the property of the zamíndár by or with respect to whom the application was made under section four to present to the special Judge, within two months from the date of the publication, a written statement of their claims.

Copies of notice to be exhibited.

(2) The special Judge shall also cause copies of the notice to be exhibited at his own office, at the offices of the Commissioner of the Jhánsí Division and the Deputy Commissioner of the district in which the land of the zamíndár is situate, and at some conspicuous place in the village where the zamíndár resides.

Provision for admission of claims within further period of two months.

(3) The statement must be presented within the period specified in the notice, unless the claimant satisfies the special Judge that he had sufficient cause for not presenting the statement within that period, in which case the special Judge may receive the statement within a further period of two months from the expiration of the period so specified.

8. After

8. After the publication of the notice, the following consequences shall ensue (namely) :— Consequences of notice.

(*a*) all proceedings pending at the date of the publication in any civil or revenue Court in British India in respect of any private debt to which the zamíndár is subject, or with which his immoveable property is encumbered, shall be for ever stayed; and all processes, executions and attachments issued by any such Court, and then in force, in respect of any such debt, shall become null and void;

(*b*) in respect of any such debt no fresh proceeding, process, execution or attachment shall, except as hereinafter provided, be instituted in, or issued by, any civil or revenue Court in British India;

(*c*) until the Commissioner has declared, as hereinafter provided, that the zamíndár has ceased to be subject to the disabilities mentioned in this clause—

(1) the zamíndár shall be incompetent to sell, mortgage, exchange, give, or, without the consent of the Commissioner, lease his proprietary rights in land or any part thereof; and

(2) no proceeding, process, execution or attachment shall be instituted in, or issued by, any civil or revenue Court in British India against those rights in respect of any private debt contracted by the zamíndár after the publication of the notice.

9. (1) Every claimant referred to in section seven shall, in the written statement of his claim, present full particulars thereof. Claim to contain full particulars.

(2) Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the special Judge along with the written statement. Documents to be given up.

(3) If the document is an entry in any book, the claimant shall produce the book to the special Judge Entries in books.

together

together with a copy of the entry on which he relies. The special Judge shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, the special Judge may refuse to receive that document in evidence on the claimant's behalf at the investigation of the case.

Claim not duly notified to be deemed discharged.

10. Every claim against the zamíndár in respect of a private debt shall, unless made within the time and in the manner required by this Act, be deemed, for all purposes and on all occasions, to have been duly discharged.

Order appointing time for inquiry.

11. The special Judge shall, by an order in writing, appoint a time for inquiring into each claim made as aforesaid, and a copy of that order shall be served on the claimant and on the zamíndár, or, when the application has been made on behalf of a disqualified proprietor, on the manager of his property, or the Deputy Commissioner, as the case may be.

History of transactions with zamíndár to be investigated.

At the time so appointed, or at any subsequent time to which the proceedings may be adjourned, the special Judge shall hear such of the parties as appear, and, if the amount of any claim (other than a claim decreed by a competent Court) is disputed, shall inquire into the history and merits of that claim from the commencement of the transactions between the parties, and shall, as hereinafter provided, determine the amount (if any) justly due to the claimant.

Explanation.—Subject to the right of appeal and power of revision hereinafter conferred, the effect of this determination is to extinguish the previously existing right (if any) of the claimant, together with all rights (if any) of mortgage or lien by which the same is secured, and, where any amount is determined to be due to him, to substitute for those rights a right to recover that amount in the manner and to the extent hereinafter prescribed, and not otherwise.

12. When

12. When the special Judge inquires, under section eleven, into the history and merits of a claim, he shall— Mode of taking account.

notwithstanding any agreement between the zamíndár and the claimant, or the persons (if any) through whom they claim, as to allowing compound interest, or as to setting off the profits of mortgaged property in lieu of interest without an account, or otherwise determining the manner of taking the account, and

notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account from the commencement of the transactions between the parties, and take that account according to the following rules (that is to say) :—

(*a*) separate accounts of principal and interest shall be taken;

(*b*) in the account of principal there shall be debited to the zamíndár such money as may, from time to time, have been actually received by him, or on his account, from the claimant, and the price of goods (if any) sold to him by the claimant as part of the transactions between them;

(*c*) in the account of principal there shall not be debited to the zamíndár any money which he may have agreed to pay in contravention of section 257 A of the Code of Civil Procedure;

(*d*) in the account of principal there shall not be debited to the zamíndár any accumulated interest which has been converted into principal at any statement or settlement of account, or by any contract made in the course of the transactions, unless the special Judge, for reasons to be recorded by him in writing, deems such debit to be reasonable;

(*e*) in the account of interest there shall be debited to the zamíndár, monthly, simple interest on the balance of principal for the time being outstanding at

at the rate allowed by the special Judge as hereinafter provided;

(*f*) all money paid by, or on account of, the zamíndár to the claimant, or on his account, and all profits, service or other advantages of every description received by the claimant in the course of the transactions, shall be credited first in the account of interest, and, when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of that payment shall be credited to the zamíndár in the account of principal:

Explanation.—The advantages mentioned in this clause shall be estimated, if necessary, at such money-value as the special Judge may determine in his discretion, or with the aid of arbitrators appointed by him;

(*g*) the accounts of principal and interest shall be made up to the date of making the claim; and the aggregate of the balances (if any) appearing due on both the accounts against the zamíndár at that date shall be deemed to be the amount due at that date, except when the balance appearing due on the account of interest exceeds that appearing due on the account of principal, in which case double the latter balance shall be deemed to be the amount then due.

Interest to be allowed.

13. The interest to be awarded in taking an account, according to the rules set forth in section twelve, shall be—

(*a*) the rate (if any) agreed upon between the zamíndár and the claimant, or the persons (if any) through whom they respectively claim, unless that rate is deemed by the special Judge to be unreasonable; or

(*b*) if that rate is deemed by the special Judge unreasonable, or if no rate was agreed upon, or, when any agreement to set off profits in lieu of interest without an account, entered into between the zamíndár and the claimant, or the persons (if any) through whom they respectively claim, has been set aside by the special Judge, such rate as the special Judge deems reasonable.

14. If,

14. If, on the termination of the inquiries by the special Judge, the zamíndár forthwith pays into court the aggregate amount of the claims determined to be due, together with the aggregate of such costs (if any) as the special Judge may in each case award against the zamíndár, the special Judge shall submit a report of his proceedings to the Commissioner, and shall, on the application of each claimant, pay to him such portions (if any) of the said aggregate amounts as may be due to him.

Proceedings when amount determined to be due is paid into court.

15. If the zamíndár does not pay the said amounts under section fourteen, and these amounts cannot, in the opinion of the special Judge, be paid from the proceeds of the sale of the zamíndár's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure), the special Judge shall make an order ranking the claims and costs according to the order in which they shall be paid or discharged, and fixing the interest (if any) to be paid on the amounts thereof respectively from the date of the final decision thereon to the date of the payment or discharge thereof.

Power to rank debts and fix future interest.

16. When any person whose claim has been determined by the special Judge, or whose claim is, under section ten, to be deemed to be discharged, has, as mortgagee or otherwise, obtained possession of any land of the zamíndár as security for his claim and continues in possession of that land, the special Judge may order him to be ejected therefrom.

Power to eject mortgagee, &c.

Any order passed under this section shall be executed as nearly as may be in accordance with the rules prescribed by the Code of Civil Procedure for the execution of decrees.

17. When the proceedings hereinbefore prescribed have been concluded otherwise than under section fourteen, the special Judge shall submit a report to the Commissioner, showing the nature and amount of the claims and costs as determined and awarded by him, the nature and amount of all the zamíndár's property (exclusive of his proprietary rights in land and

Report to be submitted by special Judge in certain cases.

and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure) which may be available for the payment or discharge of the same, and, when an order has been made under section fifteen, the particulars of such order.

CHAPTER V.

PROCEDURE OF COMMISSIONER AND MODE OF LIQUIDATION.

On report of special Judge, Commissioner to sell property reported by special Judge, and, if necessary, to direct valuation of proprietary rights.

18. On receiving a report under section seventeen, the Commissioner shall direct that the property reported by the special Judge as available for the payment or discharge of the claims and costs determined and awarded by him, or any specified portion of that property, be sold by public auction, and, from the proceeds thereof, shall pay or discharge, so far as practicable, the amount of the said claims and costs.

If those proceeds are not sufficient to pay or discharge in full that amount, the Commissioner shall direct the value of the zamíndár's proprietary rights in land to be ascertained in the manner following :—

For the purposes of a loan, the value of those rights shall be estimated to be a sum amounting to six times the nett annual profits of the zamíndár.

For the purposes of purchase by Government, the value of those rights shall be estimated to be a sum amounting to ten times those nett annual profits.

"Nett annual profits."

Explanation.—The expression "nett annual profits" means the balance left, after deducting the amount of the annual Government revenue and the rates payable annually by the zamíndár under the North-Western Provinces Local Rates Act, 1878, or any other Act for the time being in force, from the aggregate amount of—

(*a*) the rents which he is entitled to receive annually from his tenants;

(*b*) the

(*b*) the rent which he would have to pay annually for his sír-land (if any), if he were an ex-proprietary tenant thereof;

(*c*) all other profits annually receivable by him as zamíndár; and

(*d*) in the case of profits occasionally receivable or varying in amount from year to year, the average annual amount of such profits during the ten years next preceding the valuation.

Proceedings in liquidation.

19. When the value of the zamíndár's proprietary rights has been ascertained as directed in section eighteen, the Commissioner shall proceed as follows:—

(*a*) If the sum at which the rights have been valued for the purposes of a loan is sufficient to pay or discharge the unpaid balance of the claims and costs determined and awarded by the special Judge together with the zamíndár's public debts, the Commissioner may, with the consent of the zamíndár, direct such sum as may be necessary, not being more than the amount of such valuation, to be advanced from the public treasury as a loan to the zamíndár, repayable with interest thereon at the rate of five per cent. per annum, by instalments, within a term not exceeding ten years, and shall, from the sum so advanced, pay or discharge in full the said balance and the said public debts.

(*b*) If the zamíndár does not consent to accept such loan, or if the sum at which his proprietary rights in land have been valued for the purposes of a loan is not sufficient to discharge the said balance and the said public debts, the Commissioner may order that any portion, or, if necessary, the whole, of those rights shall be sold in the manner hereinafter prescribed in order to discharge such balance and debts.

Attachment of proprietary rights.

20. When an order for the sale of the proprietary rights of any zamíndár has been made under section

tion nineteen, the Commissioner may order those rights to be attached and taken under the management of the Deputy Commissioner, who shall have for this purpose the same powers as are conferred, for the management of a mahál, on a Collector by the North-Western Provinces Land-revenue Act, 1873, section 155.

The management shall continue until the rights are sold under this Act.

Mode of selling proprietary rights.

21. (1) All sales under this Act of proprietary rights in land shall be made by public auction in the manner prescribed by the said North-Western Provinces Land-revenue Act, 1873, for the sale of immoveable property for arrears of land-revenue.

(2.) If, at the public auction of any zamíndár's proprietary rights in land, any bid is made for those rights above the sum at which they have been valued for the purposes of purchase by Government, the rights shall be sold to the highest bidder; and the proceeds of the sale shall be paid to the Deputy Commissioner or such officer as the Commissioner may direct.

(3.) If no such bid is made, the Commissioner shall direct a sum of money equal to the amount of that valuation to be paid from the public treasury to the Deputy Commissioner or such officer.

Duty of Deputy Commissioner.

22. The Deputy Commissioner or such officer, as the case may be, shall thereupon, subject to the control of the Commissioner,—

first, pay from the money which he has received under section twenty-one the zamíndár's public debts;

secondly, out of the balance of that money, pay or discharge, so far as may be practicable, the unpaid balances of the claims and costs determined and awarded by the special Judge in the order in which they are ranked under section fifteen by that Judge;

thirdly, pay the surplus (if any) to the zamíndár.

When the whole of a zamíndár's proprietary rights

rights in land have been sold in execution of an order passed under section nineteen, clause (*b*), and the proceeds of the sale are insufficient to discharge in full the amounts referred to in this section, the unpaid balance of those amounts shall nevertheless be deemed to have been duly discharged.

Consequences of loan.

23. When a sum of money has been lent, under section nineteen, clause (*a*), to a zamíndár, and applied as provided in that clause, and he fails to pay any instalment of principal or interest on the day fixed for the payment thereof, the whole sum remaining unpaid on account of principal or interest, or both, shall be recoverable at once as if it were an arrear of land-revenue due by him in respect of the land comprised in the valuation made under section eighteen.

Conditions of purchase by Government.

24. When a sum of money has been paid from the public treasury in respect of any proprietary rights of a zamíndár as provided in section twenty-one, and has been applied as provided in section twenty-two, the following consequences shall ensue (namely) :—

(*a*) all such proprietary rights shall vest in Her Majesty;

(*b*) in respect of any of his sír-land, the proprietary rights in which are, under this section, vested in Her Majesty, the zamíndár shall be deemed to be an ex-proprietary tenant holding the land directly under the Government.

Power to declare that zamíndár has ceased to be subject to disabilities.

25. In each of the following cases (namely),—

(*a*) when a report has been submitted to the Commissioner under section fourteen, or

(*b*) when the claims and costs determined and awarded by the special Judge have been paid or discharged in full under section eighteen, or

(*c*) when the amount lent, under section nineteen, to a zamíndár has been repaid together with the interest due thereon, or

(*d*) when the amount so lent with interest has been recovered from him as an arrear of land-revenue,

or

or the balance thereof remaining unpaid has been remitted by the Local Government, or

(*e*) when the whole, or, where it is necessary to sell only a portion, that portion, of his proprietary rights in land has been sold under this Act to the highest bidder, or those rights have vested in Her Majesty under section twenty-four,

the Commissioner shall declare that the zamíndár has ceased to be subject to the disabilities mentioned in section eight, clause (*c*):

Provided that, in cases coming under clause (*d*) of this section, no such declaration shall be made without the previous sanction of the Local Government.

CHAPTER VI.

Of Appeal and Revision.

Appeals.

26. An appeal against any decision or order of the special Judge, under this Act, shall lie to the Commissioner if preferred within one month from the date of the decision or order, and not later, unless the appellant satisfies the Commissioner that he had sufficient cause for not presenting the appeal within that period.

Subject to the power of revision next hereinafter provided, the decision of the Commissioner on an appeal under this section shall be final.

Power to call for proceedings and pass order thereon.

27. The Board of Revenue or the Commissioner may, of its or his own motion, or on the application of any person concerned, call for and revise the proceedings in any case under this Act, and pass such order thereon, consistent with the provisions herein contained, as it or he thinks fit:

Provided that nothing in this section shall empower the Commissioner to pass any order reversing or modifying an order passed by the Board of Revenue.

CHAPTER VII.

CHAPTER VII.

MISCELLANEOUS.

Death of zamíndár during proceedings

28. If a zamíndár with regard to whom a notice has been published under section seven dies before a declaration has been made in respect of him under section twenty-five,

(*a*) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the zamíndár were still living; and

(*b*) any person succeeding to the whole or any portion of the zamíndár's proprietary rights in land shall become subject in respect of those rights to the disabilities imposed by section eight, clause (*c*), and shall continue so subject until a declaration has been made in respect of him under section twenty-five.

Investigation to be deemed a judicial proceeding.

Special Judge deemed public servant within meaning of Indian Penal Code.

29. Every investigation conducted by the special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code; and the special Judge shall be deemed to be a public servant within the meaning of that Code.

Power to summon witnesses, compel production of documents and award costs.

30. For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure.

Bar of suits.

31. No suit or other proceeding shall be maintained against any person in respect of anything done by him in good faith pursuant to this Act.

Power to make rules.

32. The Local Government may, from time to time, make rules consistent with this Act—

(*a*) to regulate the procedure in all cases under this Act;

(*b*) to

(*b*) to declare what shall, for the purposes of this Act, be deemed to be the vernacular language of any specified district; and

(*c*) generally to carry out the provisions of this Act.

Such rules shall be published in the official Gazette, and, when so published, shall have the force of law.

Government of India Central Printing Office.—No. 49 L. D —19-6-82 —3,400.

ACT No. XVII of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 7th June, 1882.)

An Act to amend the Indian Ports Act, 1875.

WHEREAS it is enacted by the Indian Ports Act, 1875, section thirty-eight, that no vessel of the burden of two hundred tons or upwards shall be moved in any port to which that section has been specially extended without having a Pilot, Harbour-master, or Assistant of the Master Attendant or Harbour-master on board; and that no vessel of any burden less than two hundred tons and exceeding one hundred tons shall be moved in any such port without having on board a Pilot, Harbour-master, or Assistant of the Master Attendant or Harbour-master, unless authority in writing so to do has been obtained from the Conservator or some officer empowered by him to give such authority;

And whereas it is expedient to exempt Native vessels when moved in the Port of Bombay from the provisions of the recited section;

And whereas it is also expedient to exempt pleasure-yachts throughout British India from the levy of port-dues;

It is hereby enacted as follows:—

Short title. Commencement.

1. This Act may be called the Indian Ports Act, 1882; and it shall come into force at once.

Amendment of section 38 of Act XII of 1875 as to Native vessels in Port of Bombay.

2. To the recited section the following words shall be added:—

"Nothing in this section shall apply to Native vessels when they are moved in the Port of Bombay.

"If

[*Price one anna and three pies.*]

"If any question arises as to whether any vessel is a Native vessel within the meaning of this section, the decision thereon of such authority as the Governor of Bombay in Council may, from time to time, appoint in this behalf shall be conclusive."

Addition to Act XII of 1875.

3. After section fifty-eight of the Indian Ports Act, 1875, the following section shall be inserted, namely:—

Port-dues not chargeable on pleasure-yachts.

"58A. No port-dues shall be chargeable in respect of any pleasure-yacht."

Government of India Central Printing Office.—No. 102 L. D.—18-5-82.—3,400.

THE BURMA STEAM-BOILERS AND PRIME-MOVERS ACT, 1882.

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4. Examination of, and grant of certificates to, engineers.
5. Use of boiler or prime-mover without license prohibited.
6. On notice from owner, Inspector to examine boiler or prime-mover.
7. Inspector may require owner to alter boiler or prime-mover.
8. When Inspector to grant license.
9. Licensing of boilers, &c., in charge of certain engineers.
10. License to state period for which it is to be in force.
11. Revocation or suspension of license.
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13. Power of Inspector to enter place or building.
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16. Charges not to be brought after six months, or without Inspector's sanction.
17. Power to define limits of towns.
18. Power to make rules.

FIRST SCHEDULE.—FORM OF LICENSE.

SECOND SCHEDULE.—REPORT OF ENGINEER.

THIRD SCHEDULE.—FORM OF LICENSE TO BE ENDORSED ON REPORT OF ENGINEER.

[*Price three annas and six pies.*]

ACT No. XVIII of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 18th August, 1882.*)

An Act to provide for the inspection of Steam-boilers and Prime-movers attached thereto in British Burma.

WHEREAS it is expedient to provide in British Burma for the inspection of steam-boilers and prime-movers attached thereto, and for the management of the same by competent engineers; It is hereby enacted as follows:— Preamble.

1. *(1)* This Act may be called the Burma Steam-boilers and Prime-movers Act, 1882. Short title.

(2) It shall, except where it is otherwise expressed, come into force on such day as the Chief Commissioner of British Burma, with the previous sanction of the Governor General in Council, may, by notification in the *British Burma Gazette*, direct. Commencement.

(3) It extends in the first instance only to the towns of Rangoon, Maulmain, Akyab and Bassein; but the Chief Commissioner may, from time to time, by notification in the *British Burma Gazette*, extend it, from such date as may be specified in the notification, to any other local area in the territories administered by him. Local extent.

(4) Nothing in this Act shall apply to any locomotive engine used on a railway, or to any engine on board of a ship, launch or boat. Savings.

2. In this Act, unless there is something repugnant in the subject or context,— Definitions.

"boiler" includes any vessel used for generating steam under pressure: "boiler":

"prime-

"prime-mover": "prime-mover" includes any steam-engine, and a fly-wheel, first driving shaft or pulley when attached to any such engine:

"owner": "owner" includes also any person using any boiler or prime-mover as agent of the owner thereof, and any person using a boiler or prime-mover which he has hired from the owner thereof:

"Inspector". "Inspector" means a person appointed under this Act to be an Inspector.

Appointment of Inspectors.

3. *(1)* The Chief Commissioner may, at any time after the passing of this Act, and from time to time, appoint such persons to be Inspectors as he thinks fit, and suspend or remove any person so appointed.

(2) The persons so appointed shall, within such local area as the Chief Commissioner may, from time to time, direct, exercise the powers and perform the duties conferred and imposed by or under this Act on an Inspector.

Examination of, and grant of certificates to, engineers.

4. The Chief Commissioner may, at any time after the passing of this Act, and from time to time, make rules regulating the examination of, and the grant (with or without examination) of certificates to, persons to act as engineers of the first or second class under this Act, and the cancellation of certificates so granted.

Use of boiler or prime-mover without license prohibited.

5. *(1)* After such day as the Chief Commissioner may, by notification in the *British Burma Gazette*, fix in this behalf, a boiler or prime-mover shall not be used unless a license authorizing its use has been granted under this Act and is in force.

(2) Such a license shall not be granted in respect of a boiler or prime-mover unless it is in charge of an engineer to whom a certificate has been granted in accordance with the rules made under section four, and its condition has been ascertained as hereinafter provided.

On notice from owner, Inspector to examine boiler or prime-mover.

6. *(1)* When the owner of a boiler or prime-mover desires to obtain a license in respect thereof, he shall give notice of his intention to use the boiler or prime-

prime-mover to the Inspector for the local area within which it is situate.

(2) On receipt of the notice, the Inspector shall appoint a day and time, after sunrise and before sunset, for the inspection of the boiler or prime-mover. The day so appointed shall be a day, if the boiler or prime-mover is situate in the town of Rangoon, Maulmain, Akyab or Bassein, not later than seven days, and if it is situate elsewhere, not later than thirty days, from the day on which the notice is received.

(3) On the day and at the time so appointed, the Inspector shall carefully examine the boiler or prime-mover, and every part thereof; and the owner or person in charge thereof shall afford to the Inspector all reasonable facilities for the examination, and all such information regarding the boiler or prime-mover as he may reasonably require.

Inspector may require owner to alter boiler or prime-mover.

7. If, on making the examination under section six, the Inspector is of opinion that the boiler or prime-mover requires any alteration or addition, he shall refuse to grant a license until the alteration or addition is made, and shall serve on the owner of the boiler or prime-mover a written notice of his refusal, specifying the alteration or addition which, in his opinion, is required.

When Inspector to grant license.

8. When the Inspector is satisfied—

(*a*) that the boiler or prime-mover is in good condition, and not so exposed as to be likely to be dangerous, and

(*b*) that the boiler or prime-mover is in charge of an engineer to whom a certificate has been granted in accordance with the rules made under section four,

he shall give to the owner thereof a written license, signed by him, in the form prescribed in the first schedule hereto annexed, or a form to the like effect, on payment, by the owner, of such fee as the Chief Commissioner may by rule prescribe.

Licensing of boilers, &c., in charge of certain engineers.

9. *(1)* When a boiler or prime-mover is in charge of an engineer who has obtained, in accordance with the rules made under section four, a certificate as

engineer

engineer of the first class, the Chief Commissioner may, by an order in writing, direct that the report of that engineer shall, for the purpose of granting a license under this Act in respect of that boiler or prime-mover, be received as sufficient evidence of the matters referred to in section eight, clause (*a*).

(2) The Chief Commissioner may rescind any order made under clause *(1)*.

(3) If the owner of any boiler or prime-mover, in respect of which an order under clause *(1)* is in force, presents to the Inspector, at the time of giving notice in respect of that boiler or prime-mover under section six, a report in respect of that boiler or prime-mover in the form prescribed in the second schedule hereto annexed, or a form to the like effect, and signed by the engineer mentioned in the order, and pays to the Inspector such fee as aforesaid, the Inspector shall, notwithstanding anything hereinbefore contained, endorse on the report a license in the form prescribed in the third schedule hereto annexed, or a form to the like effect, without examining the boiler or prime-mover.

License to state period for which it is to be in force.

10. Every license granted under this Act shall state the period for which it is to continue in force, and shall cease to be in force on the expiration of that period.

Revocation or suspension of license.

11. Any person authorized by the Chief Commissioner in this behalf may revoke or suspend any license granted under this Act in respect of any boiler or prime-mover when he has reason to believe—

(*a*) that the license has been fraudulently obtained, or has been granted erroneously, or without sufficient examination ; or

(*b*) that the boiler or prime-mover in respect of which it has been granted is not in charge of an engineer to whom a certificate has been granted in accordance with the rules made under section four, or is not in good condition, or has, since the granting of the license, sustained injury ; or

(*c*) where

(*c*) where the license has been granted under section nine, that the boiler or prime-mover has ceased to be under the charge of the engineer on whose report the license was granted.

12. *(1)* The owner of any boiler or prime-mover may appeal from any order made under this Act refusing to grant, or revoking or suspending, a license.

Appeal against refusal, revocation or suspension of license.

(2) The appeal shall, within seven days from the day on which the owner received the order appealed against, be presented to some person authorized by the Chief Commissioner to hear appeals hereunder.

(3) Every such person shall be deemed to be a public servant within the meaning of the Indian Penal Code, and may, if he thinks fit, summon to his assistance, in such manner as the Local Government may, from time to time, direct, two competent assessors; and those assessors shall attend and assist accordingly.

Act XLV of 1860.

(4) If the person hearing the appeal is satisfied that the owner is entitled to the license, he shall, on payment of the fee, grant a license in such form as the Chief Commissioner may, from time to time, by rule, prescribe, or shall cancel the order revoking or suspending the license, as the case may be.

(5) If the person hearing the appeal is of opinion that the order appealed against is right, he shall dismiss the appeal; and the costs of the appeal incurred by Government and certified by him shall be recoverable from the appellant, as a fine, by any Magistrate having jurisdiction in the place where the boiler or prime-mover is situate.

13. An Inspector may at any time enter into any place or building where he has reason to believe that a boiler or prime mover is used without a license, or under a license granted under section eight, or on appeal from an order refusing a license under that section, for the purpose of inspecting and examining the same.

Power of Inspector to enter place or building.

14. Every

Penalties.

14. Every owner, or person in charge, of any boiler or prime-mover who—

(*a*) uses that boiler or prime-mover in contravention of the provisions of section five, or,

(*b*) having a license granted under this Act and in force in respect of any boiler or prime-mover, fails to produce the same when called upon, at any reasonable time to do so, by any Magistrate having jurisdiction in the place in which that boiler or prime-mover is situate, or by any person authorized in writing by that Magistrate to demand the production of the license, and

every person who prevents an Inspector from entering, under section thirteen, any place or building,

shall be punished with fine which may extend to five hundred rupees.

Engineer signing false report under section nine

15. Any engineer signing any report under section nine which he either knows or believes to be false in any material point shall be deemed to have committed an offence punishable under section 197 of the Indian Penal Code. XLV of 1.

Charges not to be brought after six months, or without Inspector's sanction.

16. No charge of an offence under this Act shall be brought against any person without the previous sanction of an Inspector, or after the expiration of six months from the date of the commission of the offence.

Power to define limits of towns.

17. The Chief Commissioner may, from time to time, define what shall be deemed to be, for the purposes of this Act, the local limits of the towns of Rangoon, Maulmain, Akyab and Bassein respectively.

Power to make rules.

18. The Chief Commissioner may, at any time after the passing of this Act, and from time to time, make rules consistent with this Act for all or any of the following purposes (that is to say) :—

(*a*) for prescribing the powers and duties of Inspectors;

(*b*) for fixing the fees payable on account of licenses granted under this Act;

(*c*) for

(*c*) for determining the time for which such licenses shall be in force;

(*d*) for regulating the procedure on hearing appeals, and conferring on the persons authorized to hear appeals any of the powers conferred on a Civil Court by the Code of Civil Procedure; and

of 1882.

(*e*) generally for carrying out the purposes of this Act.

All such rules shall be published thrice in the *British Burma Gazette*, and shall come into force on the day on which they are last so published, or on such later day as may be specified in the notification publishing them.

FIRST SCHEDULE.

(*See section 8.*)

FORM OF LICENSE.

1	2	3	4	5	6	7	8	9
Name of owner	Description of boiler.	Description of prime-mover	Power	When and where made	When and where last repaired	No and date of certificate of engineer in charge.	Period for which license is to be in force	REMARKS

I, the undersigned, certify that I have examined the boiler (*or* prime-mover) above described, and, to the best of my judgment, it is in good condition, and is not so exposed as to be likely to be dangerous. The engineer in charge is possessed of a certificate [and (*in case alterations or additions have been required*) the alterations (*or* additions) required by me have been properly made].

A B,

Inspector.

SECOND

SECOND SCHEDULE.

(*See section 9.*)

REPORT OF ENGINEER.

1	2	3	4	5	6	7	8
Name of owner.	Description of boiler.	Description of prime-mover.	Power.	When and where made.	When and where last repaired.	No. and date of certificate of engineer in charge.	REMARKS.

I, the undersigned, certify that I am in charge of the boiler (*or* prime-mover) above described, that I have examined the same, and, to the best of my judgment, it is in good condition, and is not so exposed as to be likely to be dangerous, and may safely be licensed for the period of

C. D.,
Engineer.

THIRD SCHEDULE.

(*See section 9.*)

FORM OF LICENSE TO BE ENDORSED ON REPORT OF ENGINEER.

I, the undersigned, hereby authorize the use of the boiler (*or* prime-mover) to which this report refers for a period of ending on the day of 188 .

A. B.,
Inspector.

Government of India Central Printing Office.—No. 168 L. D.—20-9-82.—3,400.

THE PANJÁB UNIVERSITY ACT, 1882.

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[*Price four annas and six pies.*]

ACT No. XIX of 1882.

Passed by the Governor General of India in Council.

(*Received the assent of the Governor General on the 5th October, 1882.*)

An Act to establish and incorporate the University of the Panjáb.

Preamble.

WHEREAS an Institution, styled at first the Lahore University College, but subsequently the Panjáb University College, was established at Lahore in the year 1869, with the special objects of promoting the diffusion of European science, as far as possible, through the medium of the vernacular languages of the Panjáb, improving and extending vernacular literature generally, affording encouragement to the enlightened study of the Eastern classical languages and literature, and associating the learned and influential classes of the Province with the officers of Government in the promotion and supervision of popular education;

But it was at the same time provided that every encouragement should be afforded to the study of the English language and literature, and that, in all subjects which could not be completely taught in the vernacular, the English language should be regarded as the medium of examination and instruction;

And whereas this Institution was, by a Notification, No. 472, dated 8th December, 1869, published in the *Panjáb Government Gazette* of the twenty-third day of December, 1869, declared to be so established, in part fulfilment of the wishes of a large number of the Chiefs, Nobles and influential classes of the Panjáb, and it is now expedient, the said Institution having been attended with success, further to fulfil the wishes of the said Chiefs, Nobles and influential

ential classes, by constituting the said Institution a University for the purpose of ascertaining, by means of examination or otherwise, the persons who have acquired proficiency in different branches of Literature, Science and Art, and for the purpose of conferring upon them academical degrees, diplomas, Oriental literary titles, licenses and marks of honour;

And whereas it is also expedient that the University so constituted should be incorporated, and that the property, moveable and immoveable, which has been hitherto held by, or in trust for, the said Institution should become the property of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied;

It is hereby enacted as follows:—

Short title and commencement.

1. This Act may be called the Panjáb University Act, 1882;

and it shall come into force at once.

Establishment and incorporation of University.

2. (*1*) A University shall be established at Lahore; and the Governor General for the time being shall be the Patron of the University.

(*2*) The University shall consist of a Chancellor, a Vice-Chancellor and such number of Fellows as may be determined in manner hereinafter provided.

(*3*) The University shall be a Body Corporate by the name of the University of the Panjáb, having perpetual succession and a common seal, with power to acquire and hold property, moveable or immoveable, to transfer the same, to contract, and to do all other things necessary for the purposes of its constitution.

(*4*) The University shall come into existence on such day as the Local Government may, by notification in the official Gazette, appoint in this behalf.

Property of Panjáb University College to vest in University.

3. All the property, moveable and immoveable, held at the date at which the University comes into existence by or in trust for the Panjáb University College, shall, on that date, become the property of the

the University, to be administered by it for the purposes of the University, subject to all existing trusts as to the manner in which, and the purposes to which, that property or any part thereof is to be applied.

Chancellor.

4. The Lieutenant-Governor of the Panjáb for the time being shall be the Chancellor of the University; and the first Chancellor shall be the Hon'ble Sir Charles Umpherston Aitchison, Knight Commander of the Most Exalted Order of the Star of India, Companion of the Order of the Indian Empire, Doctor of Laws.

Vice-Chancellor.

5. (*1*) The Vice-Chancellor shall be such one of the Fellows as the Chancellor may, from time to time, appoint in this behalf.

(*2*) Except as provided in sub-section (*4*), he shall hold office for two years from the date of his appointment, and on the expiration of his term of office may be re-appointed.

(*3*) But if a Vice-Chancellor leaves India without the intention of returning thereto, he shall thereupon cease to be Vice-Chancellor.

(*4*) James Broadwood Lyall, Esquire, of the Bengal Civil Service, and at present Financial Commissioner of the Panjáb, shall be deemed to have been appointed the first Vice-Chancellor; and his term of office shall, subject to the provisions of sub-section (*3*), expire on the last day of December, 1884.

Fellows.

6. The following persons shall be Fellows, namely:—

(*a*) every person who has held the office of Chancellor, and all persons for the time being holding such offices under Government as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf;

(*b*) persons whom the Chancellor may, from time to time, appoint by name as being eminent benefactors of the Panjáb University, original promoters of the movement in favour of the establishment of

the

the Panjáb University College, or persons distinguished for attainments in Literature, Science or Art, or for zeal in the cause of education;

(*c*) such persons (if any) as may, from time to time, be elected by the Senate of the University, and approved by the Chancellor; and

(*d*) the representatives, for the time being with the Government of the Panjáb, of such Chiefs (if any) of territories not comprised in British India as the Local Government may, from time to time, by notification in the official Gazette, specify in this behalf:

Provided that—

(*1*) the whole number of the Fellows holding office under clauses (*a*), (*b*) and (*c*), exclusive of the Vice-Chancellor, shall never be less than fifty; and

(*2*) the number of persons for the time being elected under clause (*c*) shall never exceed the number for the time being appointed under clause (*b*).

Explanation.—The succession to an office notified under clause (*a*), of a person elected under clause (*c*) or appointed under clause (*b*), does not affect his position for the purposes of the second clause of this proviso.

First Fellows.

7. (*1*) The offices specified in Part I of the schedule hereto annexed shall be deemed to have been specified in a notification issued under section six, clause (*a*); and

(*2*) the persons named in Part II of that schedule shall, except for the purposes of the second clause of the proviso to section six, be deemed to have been appointed Fellows under clause (*b*) or (*c*) of section six.

Cancellation and vacation of appointment of Fellow.

8. (*1*) The Chancellor may, with the consent of not less than two-thirds of the members of the Senate for the time being in India, cancel the appointment of any Fellow appointed under section six, clause (*b*) or clause (*c*); and the Local Government may, whenever it thinks fit, by notification in the official Gazette,

Gazette, cancel or amend any notification issued under section six, clause (*a*) or clause (*d*).

(*2*) If any Fellow appointed under section six, clause (*b*) or clause (*c*), and not being a person named in Part II of the schedule to this Act, leaves India without the intention of returning thereto, or is absent from India for more than four years, he shall thereupon cease to be a Fellow.

Constitution and powers of Senate.

9. (*1*) The Chancellor, Vice-Chancellor and Fellows for the time being shall form the Senate of the University.

(*2*) The Senate shall have the entire management of, and superintendence over, the affairs, concerns and property of the University, and shall provide for that management, and exercise that superintendence, in accordance with the Statutes, Rules and Regulations for the time being in force under this Act.

Chairman at meetings of Senate.

10. At every meeting of the Senate the Chancellor, or, in his absence, the Vice-Chancellor, or, in the absence of both, a Fellow chosen by a majority of the Fellows present at the meeting, shall preside as Chairman.

Proceedings at meetings of Senate.

11. Every question which comes before the Senate at a meeting shall be decided by a majority of the votes of the members present and of such members for the time being in India as may have sent proxies in accordance with the Rules for the time being in force under this Act; and the Chairman at any such meeting shall have a vote, and, in case of an equality of votes, a second or casting vote:

Provided that no question shall be decided at any such meeting unless fourteen members at the least, besides the Chairman, are present at the time of the decision.

Appointment of Syndicate, Faculties, Examiners and Officers.

12. Subject to the Statutes, Rules and Regulations for the time being in force under this Act, the Senate may, from time to time,—

(1) constitute an Oriental Faculty and Faculties of Arts, Law, Science, Medicine and Engineering;

(2) appoint,

(2) appoint, or provide for the appointment of, a Syndicate;

(3) appoint, suspend and remove a Registrar;

(4) appoint, suspend and remove, or provide for the appointment, suspension and removal of,—

(*a*) Examiners, Officers and servants of the University, and

(*b*) Professors and Lecturers in connection with the University.

The first Registrar shall be Gottlieb William Leitner, Esquire, Master of Arts, Doctor of Laws, Barrister-at-Law.

Functions of Syndicate.

13. The Syndicate shall be the executive Committee of the Senate, and may discharge such functions of the Senate as it may be empowered to discharge by the Statutes, Rules and Regulations for the time being in force under this Act.

Power to confer degrees, &c., after examination.

14. Subject to the Statutes, Rules and Regulations for the time being in force under this Act, the Senate may confer on all persons who have passed such examinations in the University and fulfilled such other conditions as may be prescribed under this Act—

(*a*) in the Oriental Faculty, the degrees of Bachelor, Master and Doctor of Oriental Learning;

(*b*) in the Faculty of Arts, the degrees of Bachelor and Master of Arts and Doctor of Literature:

And, if empowered by the Governor General in Council in this behalf,—

(*c*) in the Faculty of Law, the degrees of Bachelor and Doctor of Laws;

(*d*) in the Faculty of Science, the degrees of Bachelor and Doctor of Science;

(*e*) in the Faculty of Medicine, the degrees of Bachelor and Doctor of Medicine;

(*f*) in the Faculty of Engineering, the degrees of Bachelor and Master of Civil Engineering.

The Senate may also confer—

(*g*) such diplomas, Oriental literary titles and licenses

licenses as may be prescribed by any Rules for the time being in force under this Act; and

(*h*) such marks of honour for a high degree of proficiency in the different branches of Literature, Science and Art as may be prescribed by those Rules.

Power to confer degrees on persons who have passed examinations at the Panjáb University College in 1882.

15. Notwithstanding anything in section fourteen, the Senate may confer degrees, diplomas, Oriental literary titles, licenses or marks of honour, as provided by that section, on any persons who have in the year 1882, before the passing of this Act, passed such examinations prescribed by the Panjáb University College as may be sufficient to satisfy the Senate that they are persons qualified in point of learning to obtain those degrees, diplomas, Oriental literary titles, licenses or marks of honour.

Power to confer honorary degrees.

16. Notwithstanding anything hereinbefore contained, but subject to the confirmation of the Chancellor, the Senate may, in the Oriental Faculty and the Faculties of Arts and Law, grant the degree of Doctor to any person without requiring him to undergo any examination for that degree:

Provided that—

(*1*) a resolution has been passed at a meeting of the Senate that the person is, by reason of eminent position and attainments, a fit and proper person to receive that degree; and

(*2*) in the case of degrees in the Faculty of Law, the Senate has been empowered by the Governor General in Council to grant such degrees after examination.

Power to levy fees.

17. The Senate may charge such reasonable fees for entrance into the University and continuance therein, for admission to the examinations of the University, for attendance at any lectures or classes in connection with the University, and for the degrees to be conferred by the University, as may be imposed by the Rules or Regulations for the time being in force under this Act.

Power to make Statutes, Rules

18. (*1*) The Senate shall, as soon as may be after the passing of this Act, and may from time to time thereafter,

and Regulations. thereafter, make Statutes, Rules and Regulations consistent with this Act touching—

(*a*) the mode and time of convening the meetings of the Senate and of transacting business thereat;

(*b*) the appointment, suspension, removal, duties and remuneration of the Registrar, Examiners, Professors, Lecturers, officers and servants;

(*c*) the appointment, constitution and duties of the Syndicate and the Faculties;

(*d*) the previous course of instruction to be followed by candidates for the examinations of the University;

(*e*) the examinations to be passed and the other conditions to be fulfilled by candidates for degrees;

(*f*) the examinations to be passed and the other conditions to be fulfilled by candidates for diplomas, Oriental literary titles, licenses and marks of honour, respectively;

(*g*) the conduct of examinations for degrees, diplomas, Oriental literary titles, licenses and marks of honour; and

(*h*) generally all matters regarding the University.

(*2*) All such Statutes, Rules and Regulations shall be reduced into writing, and sealed with the common seal of the University, and shall—

(*a*) in the case of Statutes, and of Rules and Regulations made under clause (*e*) of this section, after they have been confirmed by the Local Government and sanctioned by the Governor General in Council, and

(*b*) in the case of all other Rules and Regulations, after they have been sanctioned by the Local Government,

be binding on all persons, members of the University, or admitted thereto, and on all candidates for degrees, diplomas, Oriental literary titles, licenses and marks of honour.

(*3*) If,

(*3*) If, on the expiration of eighteen months from the date on which the University comes into existence, no Statutes, Rules or Regulations have been made and sanctioned, or (as the case may be) made, confirmed and sanctioned, under the foregoing provisions of this section, touching a matter mentioned in sub-section (*1*), the Local Government may, by notification in the official Gazette, make such Statutes, Rules or Regulations touching that matter as it thinks fit; and, subject in the case of Statutes and of Rules and Regulations touching the matters mentioned in clause (*e*) to the sanction of the Governor General in Council, those Statutes, Rules or Regulations shall be deemed to have been made and sanctioned, or (as the case may be) made, confirmed and sanctioned, under sub-sections (*1*) and (*2*).

Duty of Local Government to enforce Act, Statutes, Rules and Regulations.

19. It shall be the duty of the Local Government to require that the proceedings of the University shall be in conformity with this Act and with the Statutes, Rules and Regulations for the time being in force under the same; and the Local Government may exercise all powers necessary for giving effect to its requisitions in this behalf, and may (among other things) annul, by a notification in the official Gazette, any such proceeding which is not in conformity with this Act and the said Statutes, Rules and Regulations.

Notifications in certain cases

20. All appointments made under section five, all appointments made or cancelled under section six, clauses (*b*) and (*c*), and section eight, all degrees, diplomas, Oriental literary titles or licenses conferred under sections fourteen, fifteen and sixteen, and all Statutes, Rules and Regulations made under section eighteen, shall be notified in the official Gazette; wherein, also, the record of the proceedings of every meeting of the Senate shall be duly published.

Annual accounts.

21. The accounts of the income and expenditure of the University shall be submitted once in every year to the Local Government for such examination and audit as the Local Government may direct.

22. The

Temporary provision as to Statutes, Rules and Regulations.

22. The Statutes, Rules and Regulations of the Panjáb University College shall, so far as they are consistent with this Act, be deemed to be the Statutes, Rules and Regulations of the University, and shall remain in force for two years from the date on which the University comes into existence, unless they are sooner repealed by a Statute made in accordance with section eighteen.

THE SCHEDULE.

(*See section 7.*)

PART I.

Offices to be deemed to have been specified under section 6, clause (*a*) :—

The office of—

Judge of the Chief Court, Panjáb;
Financial Commissioner of the Panjáb;
Surgeon-General of the Panjáb;
Commissioner of Lahore;
Commissioner of Delhi;
Commissioner of Amritsar;
Accountant-General of the Panjáb;
Director of Public Instruction, Panjáb;
Principal of the Lahore Government College;
Principal of the Lahore Medical School;
Inspector of Schools in the Panjáb;
Deputy Commissioner of Lahore;
Deputy Commissioner of Delhi;
Deputy Commissioner of Amritsar.

PART II.

Persons to be deemed to have been appointed Fellows under section 6, clause (*b*) or (*c*) :—

His Highness Mahárájá Ranbír Singh, of Jammú and Kashmír, G.C.S.I., C.I.E., Counsellor of the Empress of India;
His Highness Mahárájá Rajindar Singh, of Patiála;
His Highness Nawáb Sadík Muhammad Khán, of Bahawalpur, G.C.S.I.;
His Highness Rájá Raghbír Singh, of Jhínd, G.C.S.I., C.I.E., Counsellor of the Empress of India;
His Highness Rájá Híra Singh, of Nabhá, G.C.S.I.;
His Highness Rájá Jagatjít Singh, of Kapúrthhala;
Rájá Bije Sen, of Mandi;

Nawab

Nawáb Ibrahím Alí Khán, of Maler Kotla;
Rájá Bikram Singh, of Faridkot;
Nawáb Abdul Majid Khán;
Sardár Ajít Singh, Atariwála;
Rai Amín Chand, Sardár Bahádur;
Malaz-ul-Ulma Sardár Atar Singh, C.I.E., of Bhadaur;
Major-General Henry Prevost Babbage, Bengal Staff Corps, late Deputy Commissioner, Panjáb;
David Graham Barkley, Esquire, M.A., Bengal Civil Service, Barrister-at-Law;
Deputy Surgeon-General Henry Walter Bellew, C.S.I.;
Reverend Edward Bickersteth, M.A.;
Charles Boulnois, Esquire, Barrister-at-Law, late Judge, Chief Court, Panjáb;
Sardár Bikráma Singh, C.S.I., Ahluwália;
Arthur Brandreth, Esquire, Barrister-at Law, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
Surgeon-Major Thomas Edwin Burton Brown, M.D.;
John Scarlett Campbell, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
Surgeon-Major William Center, M.D., M.A;
Reverend Robert Clark, M.A.;
John Graham Cordery, Esquire, M.A., Bengal Civil Service;
The Hon'ble Henry Stuart Cunningham, A.M., Barrister-at-Law, Judge of the High Court, Calcutta;
Surgeon-Major Alexander Morrison Dallas;
Mansel Longworth Dames, Esquire, Bengal Civil Service;
Sir Robert Henry Davies, K.C.S.I., C.I.E., late Lieutenant-Governor of the Panjáb and its Dependencies;
Colonel William George Davies, C.S.I.;
Deputy Surgeon-General Annesley Charles Castriot DeRenzy, B.A.;
Sir Robert Eyles Egerton, K.C.S.I., C.I.E., Counsellor of the Empress, late Lieutenant-Governor of the Panjab and its Dependencies;
Dennis Fitzpatrick, Esquire, B.A., Bengal Civil Service, Barrister-at-Law;
Reverend C. W. Foreman, D.D.;
The Right Reverend Thomas Valpy French, D.D., Lord Bishop of Lahore;
Munshi Ghulám Nabi;
Surgeon-Major Robert Gray, M.B.;
Major Leopold John Henry Gray, C.S.I., Bengal Staff Corps;
Sir Lepel Henry Griffin, K.C.S.I., Bengal Civil Service;
Pandit Guru Parshád;
Sayyad Hádí Husain Khán;
Rájá Harbans Singh;
Kaur Harnám Singh, Ahluwália;

Doctor

Doctor Thomas Hastings, late Deputy Inspector-General of Hospitals;
Edward Piercy Henderson, Esquire, Bengal Civil Service, Barrister-at-Law;
Surgeon-Major George Henderson, M.D.;
Mír Hidayat Alí, Khán Bahádur;
Lieutenant-Colonel William Rice Morland Holroyd;
Reverend W. Hooper, M.A.;
Reverend T. P. Hughes, B.D.;
Munshi Hukm Chand;
Sodhí Hukm Singh;
Denzil Charles Jelf Ibbetson, Esquire, B.A., Bengal Civil Service;
Rájá Jahándád Khán, Khán Bahádur, Ghakkar;
Aghá Kalbabíd;
Fakír Sayyad Kamr-ud-dín;
Rai Bahádur Kanhya Lál, C.E.;
Khán Bahádur Khán Muhammad Sháh;
Bábá Khem Singh, C.I.E., Bedi;
John Lockwood Kipling, Esquire;
Surgeon Edward Lawrie, M.D.;
Gottlieb William Leitner, Esquire, M.A., LL.D.;
Thomas Crampton Lewis, Esquire, M.A.;
Charles Robert Lindsay, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb;
James Broadwood Lyall, Esquire, Bengal Civil Service;
General Robert Maclagan, R.E., late Secretary to Government, Panjáb, Public Works Department;
Colonel Charles Alexander McMahon;
The Ven'ble Henry James Matthew, M.A., Archdeacon of Lahore;
Colonel Julius George Medley, R.E.;
Philip Sandys Melvill, Esquire, C.S.I., late of the Bengal Civil Service, and Governor General's Agent, Baroda;
John Andrew Erasmus Miller, Esquire;
Pandit Motí Lál, Káthju;
Khán Bahádur Muhammad Barkat Alí Khán;
Khalífa Sayyad Muhammad Hussain;
Muhammad Hyat Khán, C.S.I.;
Rai Múl Singh;
Nasir Alí Khán, Kazilbásh;
Bábú Navina Chandrá Rai;
Nawáb Nawázish Alí Khán;
Major Edward Newbery;
Edward O'Brien, Esquire, Bengal Civil Service;
Henry Edmund Perkins, Esquire, Bengal Civil Service;
Henry Meredith Plowden, Esquire, B.A., Barrister-at-Law;
Major-General Charles Pollard, R.E.;

Baden

Baden Henry Baden-Powell, Esquire, Bengal Civil Service ;
Edward Augustus Prinsep, Esquire, late of the Bengal Civil Service, and Settlement Commissioner, Panjáb ;
Honorary Surgeon Rahím Khán, Khán Bahádur ;
Diwán Rám Náth ;
William Henry Rattigan, Esquire, M.A., PH.D., Barrister-at-Law ;
Pandit Rikhi Kesh ;
Rájá Sir Sáhib Dyal, K.C.S.I. ;
Rai Bahádur Sáhib Singh ;
Leslie Seymour Saunders, Esquire, Bengal Civil Service ;
Brigade-Surgeon John Barcley Scriven, late Civil Surgeon, Lahore ;
David Simson, Esquire, late of the Bengal Civil Service, and Judge, Chief Court, Panjáb ;
John Sime, Esquire, B.A. ;
Surgeon-General Charles Manners Smith, late of the Indian Medical Service ;
John Watt Smyth, Esquire, Bengal Civil Service, Barrister-at-law ;
Charles Henry Spitta, Esquire, LL.B., Barrister-at-Law ;
Thomas Henry Thornton, Esquire, D.C.L., C.S.I., late of the Bengal Civil Service, and Judge, Chief Court, Panjáb ;
Thomas William Hooper Tolbort, Esquire, Bengal Civil Service, Barrister-at-Law ;
Charles Lewis Tupper, Esquire, B.A., Bengal Civil Service ;
Major Isaac Peatt Westmoreland, R.E. ;
Lieutenant-Colonel George Gordon Young ;
William Mackworth Young, Esquire, M.A., Bengal Civil Service ;
Maulvi Zia-ud-dín Khán.

Government of India Central Printing Office.—No. 179 L. D.—1 11-82.—3,400.

THE INDIAN PAPER CURRENCY ACT 1882.

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[*Price three annas and six pies.*]

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ACT No. XX of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 26th October, 1882.*)

An Act to amend the law relating to the Government Paper Currency.

WHEREAS it is expedient to amend the law relating to the Government Paper Currency; It is hereby enacted as follows:— Preamble.

I.—Preliminary.

1. This Act may be called the Indian Paper Currency Act, 1882: Short title.

It extends to the whole of British India; Local extent.

and it shall come into force on the passing thereof. Commencement.

2. (*1*) Act No. III of 1871 (*to consolidate and amend the law relating to the Government Paper Currency*) is hereby repealed. Act No III of 1871 repealed.

(*2*) All appointments made, rules prescribed, notifications published, authorities conferred, securities purchased and notes issued under the said Act, or any Act thereby repealed, shall, if in force, undisposed of or in circulation when this Act comes into force, be deemed to be respectively made, prescribed, published, conferred, purchased and issued under this Act. And all references made to any portion of the Indian Paper Currency Act, 1871, or any Act thereby repealed, in Acts or Regulations passed before this Act comes into force, shall be deemed to be made to the corresponding portion of this Act. I of 1871.

II.—The

II.—The Department of Paper Currency.

Department of Paper Currency.

3. (*1*) There shall continue to be a Department of the public service, whose function shall be the issue of promissory notes of the Government of India, payable to bearer on demand, for such sums, not being less than five rupees, as the Governor General in Council, from time to time, directs.

(*2*) Such notes shall be called currency notes.

(*3*) The Department shall be called the Department of Paper Currency.

Head Commissioner.

Commissioners for Madras, Bombay and Rangoon.

4. At the head of the Department there shall be an officer called the Head Commissioner of Paper Currency, and there shall be three other officers, called, respectively, the Commissioner of Paper Currency for Madras, the Commissioner of Paper Currency for Bombay and the Commissioner of Paper Currency for Rangoon.

Power to establish Circles of Issue, &c.

5. The Governor General in Council may, from time to time, by order notified in the *Gazette of India*,—

(*a*) establish districts, to be called Circles of Issue, four of which circles shall include the towns of Calcutta, Madras, Bombay and Rangoon, respectively,

(*b*) appoint in each circle some one town to be the place of issue of currency notes, as hereinafter provided,

(*c*) establish in each such town an office or offices of issue,

(*d*) establish in any town situate in any circle an office, to be called a Currency Agency, and

(*e*) declare that, for the purposes of this Act, any town (other than Calcutta, Madras, Bombay or any town situate in British Burma) in which an office of issue is established, shall be deemed to be situate within such Presidency as is specified in the order.

Deputy Commissioners and Currency Agents.

6. For each Circle of Issue, other than those which include the towns of Calcutta, Madras, Bombay

bay and Rangoon, there shall be an officer, called the Deputy Commissioner of Paper Currency, and for each Currency Agency an officer, called the Currency Agent.

Subordination of Commissioners, &c

7. For the purposes of this Act,

(*a*) the Commissioners of Paper Currency for Madras, Bombay and Rangoon, and the Deputy Commissioners of Paper Currency in the Presidency of Fort William in Bengal, shall be subordinate to the Head Commissioner of Paper Currency; and

(*b*) the Deputy Commissioners of Paper Currency in the Presidencies of Fort St. George and Bombay, and in the Province of British Burma, shall be subordinate to the Commissioners of Paper Currency for Madras, Bombay and Rangoon, respectively.

(*c*) The Currency Agent at any town shall be subordinate to the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the circle of issue in which that town is situate.

Appointment, suspension and removal of officers.

8. All officers under this Act shall be appointed, and may be suspended or removed, by the Governor General in Council.

III.—Supply and Issue of Currency Notes.

Head Commissioner to provide and distribute currency notes.

9. (*1*) The Head Commissioner shall provide currency notes of the denominations prescribed under this Act, and shall supply the Commissioners and the Currency Agents subordinate to him, and the Deputy Commissioners, with such notes as they need for the purposes of this Act.

(*2*) The Commissioners and Deputy Commissioners shall supply the Currency Agents subordinate to them, respectively, with such notes as those Agents need for the purposes of this Act.

(*3*) Every such note shall bear upon it the name of the town from which it is issued.

Signatures to notes.

10. (*1*) The name of the Head Commissioner, of one of the Commissioners, of a Deputy Commissioner

or

or of some other person authorized by the Head Commissioner, or by one of the Commissioners, to sign currency notes, shall be subscribed to every such note, and may be impressed thereon by machinery.

(2) Names so impressed shall be taken to be valid signatures.

Issue of notes for silver by Head Commissioner, Commissioners and Deputy Commissioners.

11. The Head Commissioner, the Commissioners and the Deputy Commissioners shall, in their respective Circles of Issue, on the demand of any person, issue from the office or offices of issue established in their respective circles, currency notes of the denominations prescribed under this Act, in exchange for the amount thereof—

(a) in current silver coin of the Government of India,

(b) in current silver coin made under the Portuguese Convention Act, 1881, XVII of 1881.

(c) in current silver coin made under the Native Coinage Act, 1876, as to which coin a declaration has been made under section 3 of that Act; or IX of 1876.

(d) in silver bullion or foreign silver coin, not being coin of the descriptions mentioned in clauses (b) and (c), at the rate of nine hundred and seventy-nine rupees per one hundred and eighty thousand grains of silver fit for coinage and of the standard fineness prescribed by the Indian Coinage Act, 1870: XXIII of 1870.

Provided that in all places where there is no Mint of the Government of India, any such Head Commissioner, Commissioner or Deputy Commissioner may refuse to issue notes in exchange for the bullion or coin receivable under clause (d).

Issue of notes for silver by Currency Agents.

12. Any Currency Agent to whom notes have been supplied under section nine may, if he thinks fit, on the demand of any person, issue from his agency any such notes in exchange for the amount thereof in any coin specified in clause (a), clause (b) or clause (c) of section eleven.

13. The

13. The Governor General in Council may, from time to time, by order notified in the *Gazette of India*, direct that currency notes, to an extent to be specified in the order, not exceeding one-fourth of the total amount of issues represented by coin and bullion as provided by this Act, shall be issued at such offices of issue as are named in the order, in exchange for gold coin of full weight of the Government of India, or for foreign gold coin or gold bullion, at the rates, and according to the rules and conditions, fixed by that order.

Issue of notes for gold.

14. (*1*) The Head Commissioner, Commissioners, and Deputy Commissioners may require any bullion or foreign coin received under section eleven, clause (*d*), or under section thirteen, to be melted and assayed.

Melting and assaying bullion or coin received for notes.

(*2*) Any loss of weight caused by such melting or assay shall be borne by the person tendering the bullion or coin.

15. (*1*) Every person tendering bullion or foreign coin under section eleven, clause (*d*), or under section thirteen, and depositing it in any office of issue, shall, after the expiration of the time necessary for melting and assaying the same, be entitled to receive for it a certificate signed by the person authorized to issue the notes aforesaid.

Certificates for bullion or coin.

(*2*) The certificate shall—

(*a*) acknowledge the receipt of the bullion or coin,

(*b*) state the amount of notes issued under this Act, or of such notes and cash, to which the holder is entitled in exchange for the bullion or coin, and

(*c*) state the interval on the expiration of which, if the certificate is presented to the office, the holder shall be entitled to receive that amount.

IV.—Notes where legal tender and where payable.

16. Within any of the said Circles of Issue, a currency

Notes where legal tender.

currency note issued from any town in that circle shall be a legal tender for the amount expressed in that note, in payment or on account of—

(*a*) any revenue or other claim, to the amount of five rupees and upwards, due to the Government of India, and

(*b*) any sum of five rupees and upwards, due by the Government of India, or by any body corporate or person in British India:

Provided that no such note shall be deemed to be a legal tender by the Government of India at any office of issue.

Notes where payable.

17. A currency note shall be payable only—

(*a*) at the office or offices of issue of the town from which it has been issued, and

(*b*) in the case of notes issued from any town not situate in British Burma, also at the Presidency-town of the Presidency within which that town is situate.

Notes issued from Currency Agencies to be deemed to be issued from place of issue of circle.

18. For the purposes of sections sixteen and seventeen, notes issued from any Currency Agency shall be deemed to have been issued from the town appointed under section five to be the place of issue in the Circle of Issue in which that Agency is established.

V.—Reserve.

Coin and bullion received for notes to be kept as a reserve except amount fixed as herein provided.

19. The whole amount of the coin and bullion received under this Act, and under Act III of 1871, for currency notes, shall be retained and secured as a reserve to pay those notes, with the exception of such an amount, not exceeding sixty millions of rupees, as the Governor General in Council, with the consent of the Secretary of State for India, from time to time fixes.

Investment of such amount.

20. The amount so fixed shall be published in the *Gazette of India*, and the whole or such part thereof as the Governor General in Council from time to time fixes, shall be invested in securities of the Government of India.

21. (*1*) The

21. (*1*) The said coin, bullion and securities shall be appropriated and set apart to provide for the satisfaction and discharge of the said notes; and the said notes shall be deemed to have been issued on the security of the said coin, bullion and securities, as well as on the general credit of the Government of India:

Appropriation of coin, bullion and securities.

Provided that any silver bullion or coin received under section eleven, clause (*d*), may be sold or exchanged for silver coin of the Government of India, and that any gold coin or bullion received under section thirteen may be sold or exchanged for silver coin or bullion, to be so appropriated and set apart instead of the coin or bullion sold or exchanged.

(*2*) For the purposes of this section, silver bullion and coin shall be rated at ninety-eight rupees per eighteen thousand grains of standard fineness, and gold bullion and coin at the rates fixed by the Governor General in Council under section thirteen.

22. The securities purchased under section twenty shall be held by the Head Commissioner and the Master of the Mint at Calcutta, in trust for the Secretary of State for India in Council.

Trustees of securities purchased under Act.

23. (*1*) The Head Commissioner may, at any time when ordered so to do by the Governor General in Council, sell and dispose of any portion of the above-mentioned investment.

Power to sell and replace securities.

(*2*) For the purpose of effecting such sales, the Master of the Mint at Calcutta shall, on a request in writing from the Head Commissioner, at all times sign and endorse the securities, and the Head Commissioner, if so directed by the Governor General in Council, may purchase securities of the Government of India to replace such sales.

24. (*1*) The interest accruing due on the securities purchased and held under this Act shall be entered in a separate account to be annually rendered by the Head Commissioner to the Governor General in Council.

Accounts of interest on securities.

(*2*) The amount of the interest shall, from time to time, as it becomes due, be paid to the credit of the

the Government of India, under the head of "Profits of Notes Circulation".

(*3*) An account showing the amount of the profits and of the charges and expenses incidental thereto, shall be made up and published annually in the *Gazette of India.*

VI.—Private Bills payable to Bearer on Demand.

Prohibition of issue of private bills or notes payable to bearer on demand.

25. No body corporate or person in British India shall draw, accept, make or issue any bill of exchange, hundí, promissory note or engagement for the payment of money payable to bearer on demand, or borrow, owe or take up any sum or sums of money on the bills, hundís or notes payable to bearer on demand, of any such body corporate or of any such person:

Provided that cheques or drafts payable to bearer on demand or otherwise, may be drawn on bankers, shroffs or agents, by their customers or constituents, in respect of deposits of money in the hands of those bankers, shroffs or agents and held by them at the credit and disposal of the persons drawing such cheques or drafts.

Penalty for issuing such bills or notes.

26. (*1*) Any body corporate or person committing any offence under section twenty-five shall, on conviction before a Presidency Magistrate, or a Magistrate of the first class, be punished with a fine equal to the amount of the bill, hundí, note or engagement in respect whereof the offence is committed.

Prosecutions.

(*2*) Every prosecution under this section shall be instituted by the Head Commissioner, Commissioner or Deputy Commissioner, as the case may be, of Paper Currency for the Circle of Issue in which the bill, hundí, note or engagement is drawn, accepted, made or issued.

VII.—Miscellaneous.

Monthly abstracts of accounts.

27. An abstract of the accounts of the Department of Paper Currency, showing—

(*a*) the whole amount of currency notes in circulation,

(*b*) the

(*b*) the amount of coin and bullion reserved, distinguishing gold from silver, and

(*c*) the nominal value of, and the price paid for, the Government securities held by the said Department,

shall be made up monthly by the Head Commissioner, and published, as soon as may be, in the *Gazette of India*.

Supplementary powers of the Government of India.

28. (*1*) The Governor General in Council may, from time to time, by notification in the *Gazette of India*,—

(*a*) fix the amounts (not being less than five rupees) for which currency notes shall be issued:

(*b*) alter the limits of any of the Circles of Issue:

(*c*) declare the places at which currency notes shall be issued:

(*d*) fix the rates, rules and conditions at and according to which gold may be taken in exchange for currency notes:

(*e*) fix the charge for melting and assaying bullion and foreign coin received for such notes:

(*f*) fix the interval on the expiration of which holders of certificates under section fifteen shall be entitled to receive such notes:

(*g*) regulate any matters relative to paper currency which are not provided for by this Act: and

(*h*) revoke or alter any notification previously published under this Act.

(*2*) Every notification under this section shall come into force on the day therein in that behalf mentioned, and shall have effect as if it were enacted in this Act:

(*3*) Provided that no notification under clause (*d*) of this section shall have effect until six months have elapsed from the date of its appearance in the *Gazette of India*.

Government of India Central Printing Office.—No. 183 L. D.—16-11-82.—3,400.

ACT No. XXI of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 2nd November, 1882.*)

An Act to remove doubts regarding the Madras Forest Act, 1882.

WHEREAS doubts have arisen whether the Madras Forest Act, 1882, is consistent with certain Acts of the Governor General in Council, and it is expedient to remove those doubts; It is hereby enacted as follows:—

Enactments of the Governor General in Council not to affect the Madras Forest Act.

1. No enactment of the Governor General in Council shall affect, or shall be deemed to have at any time contained anything which would affect, the Madras Forest Act, 1882.

[*Price one anna.*]

Government of India Central Printing Office.—No. 184 L. D.—15-11-82.—3,400.

ACT No. XXII OF 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 22nd December, 1882.)

An Act to amend the Dekkhan Agriculturists' Relief Act, 1879.

WHEREAS it is expedient to amend in manner hereinafter appearing the Dekkhan Agriculturists' Relief Act, 1879; It is hereby enacted as follows:— Preamble

1. *(1)* This Act may be called the Dekkhan Agriculturists' Relief Act, 1882; and it and the Dekkhan Agriculturists' Relief Act, 1879, and the Dekkhan Agriculturists' Relief Act, 1881, may be cited collectively as the Dekkhan Agriculturists' Relief Acts, 1879 to 1882. Short title.

(2) This Act shall come into force on the first day of February, 1883. Commencement.

2. In this Act, unless there is something repugnant in the subject or context, "section" means a section, and "chapter" a chapter, of the Dekkhan Agriculturists' Relief Act, 1879, as amended by the Dekkhan Agriculturists' Relief Act, 1881. Definition of "section" and "chapter."

3. For section two the following shall be substituted:— New section substituted for section 2.

"2. In construing this Act, unless there is something repugnant in the subject or context, the following rules shall be observed, namely:— Construction.

"*1st.*—'Agriculturist' shall be taken to mean a person who by himself, his servants or tenants earns his livelihood wholly or principally by agriculture carried on within the limits

[*Price two annas and three pies.*]

limits of the said districts, or who ordinarily engages personally in agricultural labour within those limits.

"*Explanations.*—(*a*) An agriculturist who, without any intention of changing his status as such, temporarily ceases to earn his livelihood or to engage personally in agricultural labour as aforesaid does not thereby cease to be an agriculturist within this definition.

"(*b*) An assignee of Government assessment or a mortgagee is not as such an agriculturist within this definition.

"*2nd.*—In Chapters II, III, IV and VI, and in section sixty-nine, the term 'agriculturist,' when used with reference to any suit or proceeding, shall be deemed to include also a person who, when any liability incurred by him and forming the subject or part of the subject of that suit or proceeding was so incurred, was an agriculturist as defined in the first rule.

"*3rd.*—An agriculturist shall be deemed to reside where he earns his livelihood or personally engages in agricultural labour as aforesaid.

"*4th*—'Money' shall be deemed to include agricultural produce, implements and stock."

4. After section two the following section shall be inserted:—

Jágírdárs, &c., to be deemed Subordinate Judges.

"2A. Every jágírdár and other authority invested with powers under Bombay Regulation XIII of 1830 and Act XV of 1840 shall, for the purposes of this Act, be deemed to be a Subordinate Judge of such class as the Local Government may from time to time direct."

Amendment of section 3. (Chapter II to apply to certain suits, of whatever value.)

5. In section three, clause (*a*), after the word "account," the words "whatever be the amount or value of the subject-matter thereof" shall be inserted.

6. After